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federal register

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Thursday, April 3, 1980

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22864 **Petroluem Import Adjustment Program** Presidential proclamation

22494-22806 **Education Programs** HEW/OE issues Education Division General Administrative Regulations (EDGAR) regarding direct grant and State-administered programs, publishes 15 documents describing grant programs, and proposes selection criteria for fiscal year 1981 grants and contracts (Parts II through XVIII of this issue)

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Presidential Documents

Title 3—

The President

Proclamation 4743 of April 1, 1980

Mother's Day, 1980

By the President of the United States of America

A Proclamation

Each year, we set aside a special day of celebration to thank this Nation's mothers for the role they play in our lives.

Mother's Day 1980 finds the always demanding role of being a mother made even more complex by the choices modern women have that were not available to women of previous generations.

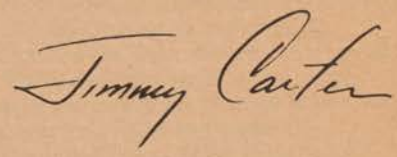
Today's mothers are involved in every aspect of business, politics, education, sports, the arts, the sciences, and government, and yet they still remain at the core of this Nation's greatest natural resource—the American family.

Whether they seek careers or work full time in the home, mothers contribute immensely to our Nation's future by shaping the character of our children.

That is why our observance of Mother's Day is so important. It provides us not only with an opportunity to honor our own mothers, but also to thank all the women who make this Nation stronger through their tireless devotion to their children.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, do hereby request that Sunday, May 11, 1980, be observed as Mother's Day. I direct Government officials to display the flag of the United States on all Government buildings, and I urge all citizens to display the flag at their homes and other suitable places on that day.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of April, in the year of our Lord nineteen hundred and eighty, and of the Independence of the United States of America the two hundred and fourth.



[FR Doc. 80-10291
Filed 4-2-80; 9:51 am]
Billing code 3195-01-M

Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Reg. 487]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule

SUMMARY: This regulation establishes the quantity of fresh California-Arizona navel oranges that may be shipped to market during the period April 4–10, 1980. Such action is needed to provide for orderly marketing of fresh navel oranges for this period due to the marketing situation confronting the orange industry.

EFFECTIVE DATE: April 4, 1980.

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, 202–447–5975.

SUPPLEMENTARY INFORMATION: *Findings.* This regulation is issued under the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. This 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 recommendations and information submitted by the Navel Orange Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1979–80 which was designated significant under the procedures of Executive Order 12044. The marketing policy was recommended by the committee following discussion at a public meeting on October 30, 1979. A final impact analysis on the marketing policy is available from Malvin E. McGaha, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

The committee met again publicly on April 1, 1980 at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of navels deemed advisable to be handled during the specified week. The committee reports the demand for navel oranges is slower when compared to demand reported for the previous week.

It is further found that there is insufficient time between the date when information became available upon which this regulation is based and when the action must be taken to warrant a 60 day comment period as recommended in E.O. 12044, and 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). It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

§ 907.787 Navel Orange Regulation 487.

Order. (a) The quantities of navel orange grown in Arizona and California which may be handled during the period April 4, 1980, through April 10, 1980, are established as follows:

(1) District 1: 1,500,000 cartons;

(2) District 2: Unlimited cartons;

(3) District 3: Unlimited cartons;

(4) District 4: Unlimited cartons.

(b) As used in this section, "handled," "District 1," "District 2," "District 3," "District 4," and "carton" mean the same as defined in the marketing order.

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

Dated: April 2, 1980.

D. S. Kuryloski,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 80-10330 Filed 4-2-80; 12:15 pm]

BILLING CODE 3410-02-M

7 CFR Part 908

[Valencia Orange Reg. 639]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona Valencia oranges that may be shipped to market during the period April 4–April 10, 1980. Such action in needed to provide for orderly marketing of fresh Valencia oranges for this period due to the marketing situation confronting the orange industry.

EFFECTIVE DATE: April, 4, 1980.

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, 202–447–5975.

SUPPLEMENTARY INFORMATION: *Findings.* This regulation is issued under the marketing agreement, as amended, and Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Valencia Orange Administrative Committee and upon other available information. It is hereby found that the action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1979–80 which was designated significant under the procedures of Executive Order 12044. The marketing policy was recommended by the committee following discussion at a public meeting on January 22, 1980. A final impact analysis on the marketing policy is available from Malvin E. McGaha, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

The committee met again publicly on April 1, 1980, at Ventura, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of Valencia oranges deemed advisable to be handled during the specified week. The committee reports the demand for Valencia oranges is fair to good on all sizes.

It is further found that there is insufficient time between the date when information became available upon which this regulation is based and when the action must be taken to warrant a 60-day comment period as recommended in E.O. 12044, and 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). It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

§ 908.939 Valencia Orange Regulation 639.

Order. (a) The quantities of Valencia oranges grown in Arizona and California which may be handled during the period April 4, 1980 through April 10, 1980, are established as follows:

(1) District 1: Unlimited cartons;

(2) District 2: Unlimited cartons;

(3) District 3: 175,000 cartons.

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

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

Dated: April 2, 1980.

D. S. Kuryloski,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 80-10329 Filed 4-2-80; 12:15 pm]

BILLING CODE 3410-02-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Part 211

[Docket No. ERA-R-78-03F]

Mandatory Petroleum Allocation Regulations; Entitlements Program—Phase Out of Small Refiner Bias

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Final rule.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) is deleting from its April 1979 final rule regarding changes to the small refiner bias in the entitlement program (which rule was effective on June 1, 1979) that portion which was designed to phase out the bias prior to the expiration of legislative authority for price and allocation controls on September 30, 1981.

EFFECTIVE DATE: June 1, 1979.

FOR FURTHER INFORMATION CONTACT:

William L. Webb (Office of Public Information), Economic Regulatory Administration, Room B–110, 2000 M Street, NW, Washington, DC 20461 (202) 653–4055

Mary B. Jones or Margaret Carroll (Regulations and Emergency Planning), Economic Regulatory Administration, Room 7202–G, 2000 M Street, NW, Washington, DC 20461 (202) 653–3202

Douglas McIver (Entitlements Program Office), Economic Regulatory Administration, Room 6128–I, 2000 M Street, NW, Washington, DC 20461 (202) 653–3376

Jeffrey D. Stoermer (Office of General Counsel), Department of Energy, Room 6A–127, 1000 Independence Avenue, SW, Washington, DC 20585 (202) 252–6911

SUPPLEMENTARY INFORMATION:

I. Background

II. Amendment Adopted

III. Procedural Requirements

I. Background

On April 27, 1979, the ERA issued a final rule (44 FR 25621, May 2, 1979), effective June 1, 1979, adopting amendments to the small refiner bias provisions of the entitlements program. The principal purpose of the amendments was to reduce the amount of the bias for certain categories of small refiners. The new formula adopted included a provision (10 CFR 211.67(e)(4)) designed to phase out the small refiner bias prior to expiration of the price and allocation authority on which the entitlements program is based on September 30, 1981.

The new rule was immediately challenged in the courts in an action brought by seven small refiners. In a decision issued August 21, 1979, the United States District Court for the District of Columbia upheld the amendments to the small refiner bias in all respects, except with regard to § 211.67(e)(4) (the small refiner bias phase-out provision), which it held was adopted in a procedurally defective manner. (*Mt. Airy Refining Co. v. Schlesinger*, 3 DOE ¶ 26,159). The court therefore enjoined DOE from enforcing or applying § 211.67(e)(4) in calculating entitlements benefits occurring to those seven refiners that were plaintiffs in the lawsuit.

In *Mt. Airy*, the District Court was precluded, by section 211 of the Economic Stabilization Act of 1970 (ESA),[1] from enjoining DOE as to any refiners other than those which were plaintiffs in that action. No other refiners have brought suit to extend the application of the injunction to include the benefits received by them under the small refiner bias. Nonetheless, we believe that it would be inequitable not to apply § 211.67(e)(4) to some small refiners but to apply it to others. We also recognize that any other small refiner could file a similar action in the same court and would likely receive the same relief. Therefore, in light of the *Mt. Airy* decision, we believe that it is appropriate for DOE to rescind § 211.67(e)(4) in order to put all small refiners on an equal footing with those that were plaintiffs in the litigation.

Even though the phase-out provision was adopted to be effective for refiners' crude oil runs to stills beginning in June 1979, its actual operation has not yet been triggered due to market conditions. The phase out provision was designed, by way of a formula, to become operative when the "runs credit"—i.e., the national domestic crude oil supply ratio (DOSR) multiplied by the price of a crude oil entitlement—for a given month drops below that for June 1979.[2] The price of a crude oil entitlement has been increasing since June because price increases by the Organization of Petroleum Exporting Countries (OPEC) have exceeded those of domestic price-controlled crude oil. At the same time, the DOSR has decreased only slightly. Since the value of the runs credit is currently higher than it was in June 1979, the point at which the phase-out mechanism would be triggered has not yet been reached and, even without significant further increases in world crude oil prices, is not expected to be reached until at least near the end of 1980.

II. Amendment Adopted

As explained above, we have decided to delete § 211.67(e)(4). We are making this deletion effective June 1, 1979, so that the phase-out provision will be treated as void from the time of its inception. Since the phase-out provision has not yet become actually operative, no small refiner is adversely affected by applying the deletion retroactive to June 1, 1979. The effect of the deletion is that, unless an additional rulemaking is

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[1] Pub. L. 91–379, as amended, Pub. L. 92–210, Pub. L. 93–28. Section 211 of the ESA was incorporated by Section 5(a) of the Emergency Petroleum Allocation Act of 1973 (EPAA), and thereby is made applicable to regulations promulgated by DOE under the EPAA.

[2] The phase out formula is set forth in § 211.67(e)(4), which reads as follows:

(4) For a given month, the number of additional entitlements to be issued pursuant to subparagraph (e)(1) above shall be multiplied by the lesser of 1.0 or a fraction, the numerator of which is the product of multiplying the national domestic crude oil supply ratio for that month by the entitlement price for the same month, and the denominator of which is the product of multiplying the national domestic crude oil supply ratio for June 1979 by the entitlement price for June 1979.

instituted and further changes are adopted in accordance with prescribed procedures, the per-barrel amounts of the small refiner bias benefits for different categories of small refiners will remain at present levels until the termination of the entitlements program.

III. Procedural Requirements

A. *Section 404 of the DOE Act: Referral to the FERC.* Pursuant to the requirements of Section 404(a) of the Department of Energy Act, we have referred this rule to the Federal Energy Regulatory Commission (FERC) for a determination whether the proposed rule would significantly affect any matter within the FERC's jurisdiction. Following an opportunity to review this rule, the FERC has declined to determine that it may significantly affect any of its functions.

B. *Section 7 of the FEA Act: Referral to the EPA.* Under section 7(a) of the Federal Energy Administration Act of 1974 (15 U.S.C. section 787 *et seq.*, Pub. L. 93–275 as amended), the requirements of which remain in effect under section 501(a) of the DOE Act, the delegate of the Secretary of Energy shall, before promulgating proposed rules, regulations, or policies affecting the quality of the environment, provide a period of not less than five working days during which the Administrator of the Environmental Protection Agency (EPA) may provide written comments concerning the impact of such rules, regulations, or policies on the quality of the environment.

A copy of this rule was sent to the EPA Administrator. After completing its five day review, the EPA Administrator had no comments.

C. *National Environmental Policy Act.* It has been determined that this rule does not constitute a "major Federal action significantly affecting the quality of the human environment" within the meaning of the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.* This amendment to the entitlements program simply deletes a provision which has never become operative and which has been judicially declared to have been adopted in a procedurally defective manner. While the provision technically could still be applied to small refiners that were not plaintiffs in the *Mt. Airy* litigation, it would be impractical and inequitable to do so. Therefore, the amendment will have no effect on the environment, and an environmental assessment or an environmental impact statement is not required by NEPA or by the applicable DOE regulations for compliance with NEPA.

D. *Section 501 of the DOE Act: Notice and Comment.* Under section 501(c) of the DOE Act we are not bound by the prior notice and hearing requirements of subsections 501 (b)–(d) with respect to a rule upon our determination that no substantial issue of fact or law exists and that the rule is unlikely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses. Where no such substantial issue or impact is foreseen, the proposed rule may be promulgated in accordance with section 553 of the Administrative Procedure Act (APA), Title 5, United States Code.

This amendment to the entitlements program raises no substantial issue of law or fact, nor is it likely to have a substantial impact on the economy or large numbers of individuals or businesses, because it merely deletes a provision which has never been applied or enforced in the past and which will not be applied or enforced in the future in view of the judicial decision as to its unlawful adoption. Therefore, the amendment will be promulgated in accordance with section 553 of the APA.

E. *Section 553 of the APA: Notice and Comment.* Section 553(b) of the APA requires that general notice of a proposed rulemaking be published in the **Federal Register**, except when the agency for good cause finds that notice and public procedure thereon is impracticable, unnecessary, or contrary to the public interest. We find that the notice and public comment procedures of section 553(b) are unnecessary in this case, because this amendment merely deletes a provision which has never been operative and which has been held by the judiciary to have been defective in the manner in which it was adopted.

Section 553(d) requires that the publication of a substantive rule be made at least 30 days before the effective date of the rule. Subsection (d)(1) of section 553, however, provides for an exception to this 30-day publication requirement where the rule grants or recognizes an exemption or relieves a restriction. This amendment relieves a restriction by deleting a provision which might otherwise reduce the entitlements benefits of certain refiners, and therefore fits the exception of section 553(d)(1).

F. *Executive Order 12044.* Executive Order 12044 (43 FR 12661, March 23, 1978) requires the agencies subject to it to publish all proposed "significant" regulations for public comment for a minimum of 60 days. Section 2(e) of the Executive Order directs the agencies to establish criteria to identify which regulations are significant. DOE's implementing procedures are contained in DOE Order 2030 (44 FR 1032, January 3, 1979).

DOE Order 2030 provides that DOE will consider a regulation significant unless it is not expected to affect important policy concerns and is not the object of much public interest. Because this amendment merely deletes a provision which has never been operative and which has been held void by the judiciary, it will not affect any policy concerns nor will it arouse much public interest. Therefore we find that this rule is not "significant", and does not invoke the 60-day advance public comment requirement of Executive Order 12044.

(Emergency Petroleum Allocation Act of 1973, 15 U.S.C. § 751 *et seq.*, Pub. L. 93–159, as amended, Pub. L. 93–511, Pub. L. 94–99, Pub. L. 94–133, Pub. L. 94–163, and Pub. L. 94–385; Federal Energy Administration Act of 1974, 15 U.S.C. § 787 *et seq.*, Pub. L. 93–275, as amended, Pub. L. 94–332, Pub. L. 94–385, Pub. L. 95–70, and Pub. L. 95–91; Energy Policy and Conservation Act, 42 U.S.C. § 6201 *et seq.*, Pub. L. 94–163, as amended, Pub. L. 94–385, Pub. L. 95–70, Pub. L. 95–619, and Pub. L. 96–30; Department of Energy Organization Act, 42 U.S.C. § 7101 *et seq.*, Pub. L. 95–91, Pub. L. 95–509, Pub. L. 95–619, Pub. L. 95–620, and Pub. L. 95–621; E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 46267.)

In consideration of the foregoing, Part 211 of Chapter II of Title 10 of the Code of Federal Regulations is amended as set forth below.

Issued in Washington, D.C., March 28, 1980.

Hazel R. Rollins,

Administrator, Economic Regulatory Administration.

§ 211.67 [Amended]

1. Subsection 211.67(e) is amended by deleting subsection (e)(4) and renumbering subsection (e)(5) to be (e)(4).

[FR Doc. 80–10114 Filed 4–2–80; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 75

[Airspace Docket No. 80–WE–1]

Alteration of Jet Routes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters several jet routes in the Los Angeles, Calif., area to overlie current profile descent routes into the Los Angeles International Airport. The realignment improves traffic flow, aids flight

planning and reduces controller workload for arrival traffic.

EFFECTIVE DATE: May 15, 1980.

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

SUPPLEMENTARY INFORMATION:

History

On February 19, 1980, the FAA proposed to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to realign Jet Routes No. 64 and No. 107, in part, between Los Angeles, Calif., and Hector, Calif., and realign Jet Route No. 128 between Los Angeles and Peach Springs, Ariz., (45 FR 10807). The new alignment of these jet routes overlie current profile descent routes to Los Angeles International Airport. This action reduces controller workload by aligning jet routes with low altitude airway segments that interface with the profile descent procedures, thereby reducing coordination and radar vectors in the Los Angeles terminal area. Interested persons were invited to participate in the rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in the notice. Subpart B of Part 75 was republished in the **Federal Register** on January 27, 1980, (45 FR 732).

The Rule

This amendment to Part 75 of the Federal Aviation Regulations realigns Jet Routes No. 64 and No. 107 between Los Angeles, Calif., and Hector, Calif., and realigns Jet Route No. 128 between Los Angeles and Peach Springs, Ariz. This action improves flow control procedures for arrival and departure traffic in the Los Angeles terminal area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Part 75 of the Federal Aviation Regulations (14 CFR Part 75) as republished (45 FR 732) is amended, effective 0901 G.m.t., May 15, 1980, as follows:

Under Jet Route No. 64: "From Los Angeles, Calif., via Paradise, Calif.; Hector, Calif.;" is deleted and "From Los Angeles, Calif., via INT Los Angeles 083°T and Hector, Calif., 226°T radials; Hector;" is substituted therefor.

Jet Route No. 107 is amended to read as follows: "From Los Angeles, Calif., via Los Angeles 083°T and Hector, Calif., 226°T radials; Hector; Boulder City; Milford, Utah; Delta, Utah; Rock Springs, Wyo.; Crazy Woman, Wyo.; Dickinson, N. Dak.; Pembina, N. Dak.; to Kenora, Ontario, Canada. The portion within Canada is excluded."

Under Jet Route No. 128: "From Los Angeles, Calif., via Paradise, Calif.; Peach Springs, Ariz.;" is deleted and "From Los Angeles, Calif., via INT Los Angeles 083°T and Peach Springs, Ariz., 244°T radials; Peach Springs;" is substituted therefore.

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

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

Issued in Washington, D.C., on March 31, 1980.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80–10158 Filed 4–2–80; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 159

[Docket No. 19939; Amdt. 159–17]

Dulles Airport Access Highway

Note.—This document originally appeared in the **Federal Register** for Tuesday, April 1, 1980. It is reprinted in this issue to meet requirements for publication on the Monday–Thursday schedule assigned to the Department of Transportation.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: Carpools of four or more persons will be permitted to use the Dulles Airport Access Highway during the peak commuter hours. The highway had been restricted to airport traffic only. The following ramps will be open to carpools:

Ramp	A.M.	P.M.
Reston Ave. Eastbound	6 to 9	3:30 to 7.
Reston Ave. Westbound	6 to 9	3:30 to 7.
Trap Road Eastbound	6 to 9	Closed.
Trap Road Westbound	Closed	4 to 7

The hours and 4 person limitation will be strictly enforced by the State of Virginia. FAA is relaxing its restrictions on the Dulles Airport Access Highway in order to promote energy efficient ride sharing.

EFFECTIVE DATE: April 1, 1980.

FOR FURTHER INFORMATION CONTACT: Dexter Davis, Manager, Dulles International Airport, P.O. Box 17045, Washington, D.C. 20041, Telephone 471–7596, or Edward Faggen, Legal Counsel, Metropolitan Washington Airports, Washington National Airport, Hangar 9, Washington, D.C. 20001, Telephone 577–8123.

SUPPLEMENTARY INFORMATION: The FAA Director of Metropolitan Washington, Airports issued a Notice of Proposed Rulemaking on January 9, 1980 (Notice No. 80–1) which was published in the **Federal Register** on January 14, 1980 (45 FR 2661) in which FAA proposed to allow carpools to use the Dulles Airport Access Highway (Access Highway). With certain exceptions, use of the Access Highway is presently restricted to airport users. The proposal was to permit vehicles with four or more persons to have access to the highway in both directions during the peak commuter periods until January 1, 1985. Interested persons have been afforded an opportunity to participate in the making of this final rule. After consideration of comments received in response to the Notice, and after having completed an environmental assessment of the proposal, FAA has determined that the proposed rule should be finalized, as modified below, and made effective.

This amendment is part of the DOT/FAA continuing effort to improve transportation efficiency and to encourage ride sharing and other energy conservation measures. This amendment removes certain restrictions on the use of the Dulles Airport Access Highway and will enhance carpooling as an alternative to the existing modes of transportation for those who commute from or to the Dulles Airport Access Highway corridor.

Discussion of Comments

The FAA received approximately 50 comments predominantly from members of the general public who reside or work in the Access Highway corridor. Several comments were submitted by civic organizations on behalf of large numbers of individuals. Comments were also submitted by representatives of local government and by agencies of the Federal Government. Industry organizations such as the Air Transport Association and the American Motorcycle Association also expressed their views on the opening of the Access Highway to carpools.

Airport Access

The majority of the comments by far were in favor of opening the Access Highway to carpools. However, many of the comments expressed concern or sought clarification about one aspect of the proposal or another. The comments in opposition expressed concern about access for the users of Dulles Airport. The Air Transport Association supports an exclusive airport use policy and objects to deviation from that policy, including the proposed carpool use. The ATA believes that if carpools are allowed, enforcement of the 4 person restriction should be on a full-time basis not on spot check basis. ATA also takes the position that the Highway should revert to the use for which it was authorized and constructed no later than January 1, 1985. Restoration to exclusive airport related use in 1985 should not be conditioned on the adoption of the Metropolitan Washington Airports Policy which appeared in the **Federal Register** on January 21, 1980. The ATA also expressed concern over the informal exemptions to the "airport only" policy that have developed over the years such as for the Reston Commuter Bus and for patrons of Wolf Trap Farm Park. One other commenter expressed concern about congestion on the Access Highway and was skeptical about FAA's ability to return the road to exclusive airport use.

The FAA's philosophy regarding the Access Highway has not changed. The Dulles Access Highway was built with Federal funds to provide airport users with a free flowing artery to the airport. It was designed to support use of Dulles Airport. The FAA remains committed to preserving the original intent of the Access Highway. The Secretary of Transportation's report to Congress entitled Carpool Access to Dulles Airport Access Road, July 1979, in which the Department of Transportation recommended opening the Highway to four or more person carpools, clearly acknowledged that free flowing airport access is the overriding purpose of the highway and it recommended that carpools be allowed only until January 1, 1985.

Also, the National Capital Planning Commission specifically endorsed the carpool proposal on the condition that carpool use be terminated in 1985. By that date Dulles Airport traffic is projected to have increased to the point that the carpool and other non-airport users will contribute to congestion on the Access Highway. However, FAA's traffic projections indicate that significant interference to airport patrons will not result before 1985 from implementation of the proposal. FAA's resolve to preserve the Access Highway for its principal purpose was stated in the Notice and is restated here. As congestion increases on the Highway, whether or not it is a result of efforts to promote Dulles Airport, efforts to minimize or eliminate non-airport related traffic will be considered by FAA.

As for informal exemptions. FAA has allowed very few exemptions in the 18 years that the Highway has been open. In addition to carpools, this regulation will give formal recognition to vehicles operated for the purpose of going directly to or from performances of Wolf Trap Farm Park, to buses operated in common carriage for which use of the Access Highway is appropriate, and to buses operated by the Fairfax County School systems.

Enforcement

Several commenters urged that if the carpool proposal is adopted a strong commitment to enforcement is essential to its success. FAA agrees, but has clearly stated from the outset, that enforcement is primarily a local government responsibility inasmuch as local citizens and employees derive the benefit from carpool use. FAA has sought and received the cooperation of the State of Virginia in this regard. FAA and the State have executed a Memorandum of Understanding in which the State has assumed the responsibility for the enforcement of the carpool restrictions. The enforcement plan involves having an attendant on duty on each of the ramps during the carpool operating hours. The attendant will operate the gates to permit entrance to the highway only by vehicles with four or more occupants. State or local police will provide the necessary law enforcement. FAA is taking the necessary steps to confer jurisdiction upon the State to enable the State police to enforce the carpool restriction on the ramps which heretofore have been subject to exclusive Federal jurisdiction. The carpool restriction will be posted on an official sign at the ramps. Violators will be subject to penalty under Virginia Code Sections 46.1–173. A violation is a traffic infraction subject to a fine of not more than one hundred dollars under Virginia code Section 46.1–16.01.

In addition, FAA police will continue to have jurisdiction over these ramp areas. Since this regulation is enacted pursuant to the authority of the FAA granted in the Second Washington Airport Act, 64 Stat. 770, violations may be prosecuted as a Federal misdemeanor offense under Section 159.19 and subjected to a fine to be determined by the Federal Court. Operation of a vehicle in violation of an operating sign is also a violation of the regulation under section 159.35(c)(6). If violations become excessive, stricter enforcement measures will be taken. If ineffective enforcement of these restrictions occurs which would jeopardize the primary purpose of the Highway, the FAA will have to consider closing it to carpools.

Hours of Operation

A considerable number of commenters requested FAA to modify the proposed hours for carpool access. As proposed in Notice 80–1, the carpools would be allowed to operate between 6:00 a.m. and 9:00 a.m. and between 4:00 p.m. and 7:00 p.m., Monday through Friday. Many employees at the United States Geological Survey in Reston, Virginia requested that the ramps at Reston Avenue be open at 3:30 p.m. instead of 4:00. FAA has inquired at the Geological Survey and has been advised that more than 2,000 employees complete their work day at 3:30 p.m. and that the vast majority of these employees commute by private automobile. Many carpools already exist and would use the Access Highway westbound in the morning but would be precluded from using them in the afternoon without enduring a half-hour delay that more than offsets the benefits from carpool use of the Access Highway.

FAA agrees that the ramps at Reston can be opened at 3:30 p.m. The State of Virginia has also concurred and will provide law enforcement and an attendant at this hour. Therefore the Reston Avenue ramps will be open in both directions from 6:00–9:00 a.m. and from 3:30–7:00 p.m.

The ramps at Trap Road are not expected to generate as much traffic as Reston Avenue. The Trap Road ramps will be opened in the peak direction only. That is, in the morning the westbound exit ramp from the Access Highway onto Trap Road will be closed. The eastbound entrance ramp onto the Highway will be opened to carpools from 6:00–9:00 a.m. In the afternoon, the eastbound ramp will be closed. Westbound carpool traffic will be able to exit from 4:00–7:00 p.m.

The hours are summarized as follows:

Ramp	A.M.	P.M.
Reston Ave. Eastbound	6 to 9	3:30 to 7.
Reston Ave. Westbound	6 to 9	3:30 to 7.
Trap Road Eastbound	6 to 9	Closed.
Trap Road Westbound	Closed	4:00 to 7.

Furthermore, FAA wants to keep a degree of flexibility in the hours of

operation of the ramps. Therefore, the final regulation will not prescribe the hours which would necessitate regulatory action to make even a minor adjustment. Instead, these vehicles may operate in the hours prescribed by the signs posted on the Access Highway. Enforcement action is not dependent on the hours being prescribed by regulation. FAA will, in cooperation with the State of Virginia, see to it that the hours of operation are set forth on a highway sign at each of the ramps. Once posted, the hours will be enforced as any other Access Highway operating sign pursuant to Section 159.35(c)(6). However, the hours of operation may only be changed by order of the Director of the Metropolitan Washington Airports.

Wolf Trap Farm Park

The Department of Interior, National Park Service, which operates Wolf Trap expressed concern about the use of the Trap Road ramps. During the summer months when the park is open, matinee performances are conducted which generate considerable traffic during the early part of the rush hour. To expedite the traffic from the park, Trap Road is operated in a one way mode south from the park towards the Access Highway for the time necessary to clear the parking lots. Carpools arriving at the Westbound exit ramp of Trap Road at 4:00 p.m. on the matinee days may encounter delays up to 30 minutes in exiting the ramp.

FAA does not intend to interfere with the efficient operation of Wolf Trap. Neither does FAA believe that carpooling should be disallowed on the westbound Trap Road ramps or that the hours of operation should differ significantly from the other ramps. FAA has discussed the matter with the Park Service and has decided that the Westbound ramp should be available to carpools from 4:00 to 7:00 p.m. in the afternoon, as proposed. Carpoolers are advised that they may encounter significant delays on matinee performance days during the Wolf Trap performance season.

The Park Service's other principal concern is that the parking lots at Wolf Trap might be used by commuters for carpool formation. FAA does not condone or encourage in any way, the use of Wolf Trap parking lots by commuters. However, the park police, as opposed to FAA or State Police, are in the best position to enforce the Park Service parking policies. Should unanticipated conflicts with Park operations arise, further carpool management action may be undertaken in consultation with the National Park Service. Such action could include, if necessary, changing carpool operating hours at Trap Road or closing the Westbound ramp to carpools during the Park season.

"Backtracking"

Backtracking is the term applied to those commuters who enter on the road, proceed west to the Airport only for the purpose of making a U turn and proceeding back to the east. The maneuver evidently results in some time saving for commuters, its circuitous nature notwithstanding. The practice has become widespread; as many as 3500 cars make U turns at Dulles Airport in a typical peak period. The practice has led to considerable congestion on the Access Highway from Route 28 west to the Airport. Furthermore the practice is not legal as the road is intended to be an "airport only" highway and its use is restricted by regulation. The regulation is, today, clarified in this regard by the addition of the phrase "on airport related business" to 159.35(a). Unless one of the exceptions apply, private vehicles are permitted to use the Access Highway only for the purpose of going to, or leaving, Dulles Airport on Airport related business.

Several commenters were concerned that FAA is cracking down on this illegal use as part of implementing the carpool proposal. This not the case. FAA will engage in random enforcement of the traffic restrictions on the Access Highway. However, the advent of carpooling does not require or signal any change in the FAA's position on backtracking. Carpooling offers commuters a legal alternative to backtracking and the FAA is hoping that the number of backtrackers will be diminished. This is the only relationship between the carpool proposal and backtracking.

Number of Occupants

A significant percentage of the commenters urged FAA to lower the vehicle occupancy requirement to three or two persons because such carpools are easier to form and could ultimately take more cars off congested alternative routes than four person carpools.

FAA considers it necessary to require carpools to have four or more persons in order to insure the free flow of traffic for airport users. A lower number may indeed attract more cars. It would also create a greater likelihood of congestion and therefore constitute a conflict with the FAA's airport only policy. The four person requirement is consistent with existing and planned carpool strategies for the metropolitan area. Less than four person carpools are not allowed on the I–395 carpool lanes, nor will they be allowed on the I–66 segment inside I–495 (the "Beltway"), nor on the Dulles Access Highway extension to meet I–66 when it is completed. These roads would become overly congested if the four person restrictions were relaxed. When the Access Highway and I–66 are connected, the Access Highway will conform to the traffic restrictions imposed upon I–66 by the Secretary of Transportation. It would not be good transportation policy to provide relaxed carpool requirements for the interim period until the Dulles Access Highway extension and I–66 are completed; this would encourage a commuter practice which will need to be stopped when the new facilities are open.

Neither does FAA agree with those commenters who urged that carpools be given a pass so that on days when one, or more than one, member is absent, the vehicle and its remaining occupants may continue to use the highway. A pass system, though a convenience for some, is also subject to abuse when absenteism becomes more the rule than the exception. An increased enforcement effort would be required in order to minimize the violation rate and to be fair to legitimate four-person carpoolers. Neither FAA nor the State is prepared to undertake the administrative tasks associated with issuing passes for the use of the Access Highway and assuring that the passes are not abused.

Motorcycles

Several commenters urged FAA to open the Access Highway to motorcycles on the theory that motorcycles provide an energy efficient form of transportation. FAA, however, is not prepared to allow vehicles onto the Access Highway based upon their passenger miles per gallon of fuel consumed. If it did so, the same rationale would have to be extended to fuel efficient automobiles. The result would be a vehicle access plan that is difficult to administer and one that has a greater potential for adding congestion to the Dulles Airport Access Highway as well as to Reston Avenue and Trap Road. The Department of Transportation and FAA's efforts are directed at promoting carpooling and ride sharing, and relaxing the restrictions on the Access Highway will achieve these objectives. Allowing motorcycles would not promote these objectives.

Metrorail

One citizen association expressed its opposition to the carpool access until such time as the Metrorail system replaces "other ground transportation

systems" in the corridor such as the proposed Dulles toll road. FAA does not believe that Metrorail is a realistic short-term alternative to promoting carpooling. Metrorail is planned to serve Vienna, Virginia, and will eventually provide a transportation alternative to the automobile and bus in the area. Also, the median strip of the Access Highway is being preserved by FAA for Metrorail in the eventuality that the Washington Metropolitan Area Transit Authority concludes that an extension of Metrorail to Dulles Airport is feasible and prudent. Moreover, while the Department of Transportation is interested in the issue of Metro service to Dulles, that issue is not properly a subject of FAA rulemaking or one exclusively within FAA's authority.

New Ramps

The Board of Supervisors of Loudoun County, Virginia, endorsed the proposal to allow carpools to use the Access Highway and, further, requested FAA to pursue the construction of access ramps at Route 28. At present access to or from Route 28 is permitted only to and from the airport. As a result Route 28 is heavily used by "backtrackers." Loudoun County carpools would have to travel to Reston Avenue to gain lawful access to the Highway. FAA recognizes this as a disincentive to Loudoun County commuters. Nevertheless, the FAA is not prepared to undertake the capital expenditures in excess of $750,000.00 associated with the new ramp construction. Carpoolers will be allowed to turn around at Dulles Airport, since the number of carpools making the U turn is not anticipated to be so great as to cause significant delay to airport users. This approach will be beneficial to carpools composed of citizens from Loudoun County and from the Herndon area of Fairfax County.

Implementation at Reston, Virginia

The Reston Community Association and the Reston Commuter Bus (RCB) organization generally endorsed the proposal and submitted a suggested plan to allow carpools to use the Reston Avenue ramps. These ramps are Federal property but were constructed at the expense of Gulf Reston. They have been used primarily to provide Highway access for Reston's commuter bus service. RCB is concerned that FAA not "arbitrarily assign priority to car and vanpools."

The ramps have served as a convenient transfer point for bus riders and a staging area for the RCB. The compatibility of this practice with automobile use of the ramps concerns the FAA and the State of Virginia from a safety standpoint. Every effort should be made to retain the bus transfer location on the ramps. If that is not tenable, then a location in the immediate vicinity of the ramp will be pursued. FAA and the State have developed a plan for operating the ramp that does not contemplate relocating the bus operation unless operational problems develop that cannot be otherwise resolved. It is currently planned to widen the ramp approximately six feet opposite the bus shelter to allow automobiles to pass the stopped buses. Additional construction and the use of barriers will be considered if found necessary after the ramps are opened. Also, traffic signal lights will be installed at the intersections of the ramps and Reston Avenue. This is expected to moderate the speed of vechicles through the area and safely permit left turns from the westbound exit ramp onto Reston Avenue. After the opening of the ramps, further measures will be taken as needed.

Local Governments and Planning Organizations

Loudoun County and Fairfax County, Virginia have endorsed the proposal. The Council of Governments Transportation Planning Board (COG) and the National Capital Planning Commission (NCPC) have also endorsed the proposal. No opposition has been expressed by any local government or planning agency. NCPC's endorsement was conditioned on development of an acceptable enforcement program, termination of carpool use by January 1, 1985, and development of measures to avoid commuter parking at the Wolf Trap parking lots. The COG staff concurred with NCPC and, in addition, urged completion of the Dulles Access Highway Extension to join I–66.

An adequate enforcement program has been developed by FAA that is in accordance with all of the conditions expressed by NCPC and COG. The FAA does not encourage or condone the use of Wolf Trap for parking and carpool formation. However, enforcement of the no parking restrictions will be the responsibility of the National Park Service.

Environmental Assessment

FAA has prepared and circulated for comment an environmental assessment. A number of comments have been received and on the basis of the study and the comments FAA has concluded that the proposal, if implemented, will not have a significant impact on the human environment.

The principal environmental concerns related to continued growth in western Fairfax County and Loudoun County and to the burden imposed on closer in jurisdictions by measures that encourage, rather than discourage, use of the automobile as means of commuting to the District of Columbia.

The FAA, on behalf of the United States, is a significant landowner and employer in western Fairfax and Loudoun Counties. It has an interest in land use and in planning for the areas surrounding Dulles Airport. Also, FAA has an obligation, when considering how to best use the land entrusted to it, to carefully weigh the impacts of its decisions on its neighbor's land. Therefore, in principle, FAA agrees with those comments that stress the complex interrelationship between certain transportation development projects and land development.

However, FAA does not believe that this carpool proposal is one of those projects. The carpool proposal is a transportation development much smaller in scale with significantly less impact than, for example, the plan for building a Dulles Toll Road. The carpool proposal will not provide increased access for commercial traffic and therefore the commercial growth planned for the Dulles corridor will continue to be restrained as it currently is. The Access Highway/Route 7 corridors are planned for substantial residential development and that development is occurring rapidly and without regard for the outcome of this proposal. Several of the projected carpools that will use the DAH are already formed and are either backtracking at the airport or using alternate routes. As the incentives for carpools increase when the Dulles Extension and I–66 are completed, new carpools will be formed from existing commuters now traveling alone or in two or three passenger carpools. While the increase in carpools will result in some reduction in congestion in traffic on alternate routes, the reductions are not expected to be great enough to attract any significant growth in the corridor. While home/work trips constitute a large share of the through traffic on Route 7, the transportation problems in northwest Fairfax County frequently surface at times other than carpool peak periods such as on weekends, and holidays. The existence of the carpool access for limited weekday periods is not likely to draw any significant volumes of people to western Fairfax County or Loudoun County that would otherwise not relocate there.

Furthermore, this proposal is not expected to significantly change the

volume of traffic passing through Arlington County, Virginia and into the District of Columbia. Any change that there is will be towards the reduction in total vehicle trips. There will be no significant secondary impacts on these areas as a result of this proposal.

Access by Handicapped Persons

FAA was requested by an individual to allow handicapped persons who are not in carpools to commute via the Access Highway. An exemption is not warranted. The purpose of the rule is to promote the use of carpools. An exemption for the commuter who is handicapped does not promote the carpool policy, nor is it consistent with the basic FAA policy on commuter use of the Access Highway. Commuters in private vehicles have not been permitted to use the Access Highway and handicapped individuals have not been exempt. The relaxation of the rule to permit carpools does not change the status of the individual commuter.

Editorial Revisions

The reference to "trespass" in section 159.35(a) is deleted as obsolete. Violators of the Access Highway regulation may be charged with a misdemeanor under the Second Washington Airport Act, 64 Stat. 770, and under these regulations, 14 C.F.R. 159.191. The regulation will state that any person who enters upon the Highway for an unauthorized purpose shall be guilty of a criminal offense and subject to a penalty under these regulations.

Access "road" is changed to access "highway."

The phrase "on airport related business" is added to 159.35(a) to further underscore the original intent of the regulation that private vehicles may enter upon the highway only to travel to the airport on airport related business, unless one of the exceptions apply.

Termination

The regulation provides that carpool access will terminate on January 1, 1985. The Agreement between the FAA and the State of Virginia Department of Highways and Transportation providing for enforcement and other responsibilities, also expires on January 1, 1985. Termination of that Agreement may occur prior to that date: (a) if a highway paralleling the Access Highway is completed by the State of Virginia and is open to the public; (b) if FAA determines that enforcement of the carpool restrictions are not effectively achieving a high level of compliance; or (c) if FAA determines that the carpool traffic is interfering with Dulles Airport traffic; (d) if the State of Virginia determines that carpool access should be terminated due to a severe decrease in use, the State's inability to staff the ramps, or similar reason.

Termination of the Agreement with the State may cause FAA to amend its regulations to modify carpool access or prohibit carpool use of the access highway. The State has agreed that termination of the Agreement shall be effective only after public notice and an opportunity to comment. FAA regulations would not be amended without appropriate notice and opportunity for comment.

Effective Date

The rule will be effective upon publication in the **Federal Register** (April 1, 1980). Inasmuch as the rule operates to remove a restriction, the requirement for publication of the rule not less than 30 days before its effective date is inapplicable. 5 U.S.C. Section 553(d).

Adoption of Amendment

Accordingly, § 159.35 of Part 159 of the Federal Aviation Regulations is amended, effective April 1, 1980, to read as follows:

§ 159.35 Use of access highway to Dulles International Airport.

(a) Except in an emergency, and except as provided in paragraph (b) of this section, private vehicles may enter upon the Dulles Airport Access Highway only for the purpose of going to, or leaving, Dulles International Airport on airport related business, or, with the permission of the Airport Manager, to perform work on the Highway. Entry by any person upon the Dulles Airport Access Highway for a purpose not authorized by this section is a criminal offense. Violators are subject to a penalty under these regulations.

(b) *Exceptions.* Any person may enter upon and travel over the Access Highway in the following vehicles:

(1) Vehicles operated for the purpose of going directly to or from performances at the Wolf Trap Farm Park for the Performing Arts.

(2) Buses operated in common carriage of persons by companies holding a certificate of public convenience and necessity for an operation for which use of the highway is appropriate, and buses operated by the Fairfax County School System.

(3) Until January 1, 1985, vehicles occupied by four or more persons. These vehicles may operate as prescribed by signs posted on the Access Highway.

(c) Except in an emergency, no operator of a private vehicle may—

(1) Enter or leave the Access Highway through an entrance or exit road or ramp other than one constructed by the FAA as part of the Access Highway system;

(2) Make a U-turn on the Access Highway;

(3) Enter or cross the median strip of the Access Highway;

(4) Use an exit road or ramp to enter the Access Highway;

(5) Use an entrance road or ramp to leave the Access Highway; or

(6) Operate the vehicle in violation of speed limit signs and other operating signs posted on the Access Highway.

(Secs. 3 and 4 of the Second Washington Airport Act, 64 Stat. 770; sec. 313 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1359); sec. 6, Department of Transportation Act (29 U.S.C. 1655))

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). The economic impact of the proposal is judged to be minimal and a detailed evaluation is not required.

Issued in Washington, D.C. on March 28, 1980.

Langhorne Bond,

Administrator.

[FR Doc. 80-9941 Filed 3-31-80; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 7845]

Arthur Murray, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: This order modifies an order issued on July 26, 1960 by inserting a roman numeral one before the preamble of the original order; vacating the *it is further ordered* paragraph therein; and adding new Parts II, III, IV, and V. The modified order strengthens the 1960 order by giving consumers the right to unlaterally cancel contracts with the company and receive prescribed refunds within 30 days of cancellation. The company is additionally required to direct franchisees and sub-franchisees to comply with the terms of the order, institute a program of continuing surveillance designed to reveal non-conformers, and terminate dealings with such parties.

DATES: Order issued July 26, 1960. Modifying order issued March 10, 1980.[1]

FOR FURTHER INFORMATION CONTACT: FTC/P, Albert H. Kramer, Washington, D.C. 20580. (202) 523–3727.

SUPPLEMENTARY INFORMATION: In the Matter of Arthur Murray, Inc., a corporation, et al. Codification under 16 CFR Part 13, appearing at 25 FR 9673, has been changed to include: Subpart-Corrective Actions and/or Requirements: § 13.533 Corrective Actions and/or Requirements; 13.533–20 Disclosures; 13.533–55 Refunds, rebates and/or credits; 13.533–60 Release of general, specific, or contractual constrictions, requirements, or restraints.

(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))

The Order Modifying Order to Cease and Desist, including further order requiring report of compliance therewith, is as follows:

Order Modifying Order To Cease and Desist

The Commission on September 18, 1979, issued its order to show cause why this proceeding should not be reopened and its order of July 27, 1960 (hereafter sometimes referred to as "the Commission Order of 1960"), modified.

Respondents having consented to the reopening of this proceeding and the modification of the Commission Order of 1960, as set forth in the show cause order and the Commission having considered the comments filed by interested persons,

Now, therefore, it is hereby ordered, That the Commission Order of 1960 be, and it hereby is, modified by inserting a roman numeral one, I, before the preamble of the Commission Order of 1960, by vacating the: IT IS FURTHER ORDERED paragraph therein, and by adding new Parts II, III, IV, and V so that the Modified Order will read as follows:

Order

I

It is ordered, That respondent Arthur Murray, Inc., a corporation, and its officers, and respondents Arthur Murray, Kathryn Murray and David A. Teichman, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, or through any licensee, in connection with the solicitation, advertising or sale of dancing instruction in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, by means of radio or television broadcasts, newspaper advertisements, contracts, telephone quizzes, crossword, dizzy dance or zodiac puzzels, "Lucky Buck" contests, or any certificates relating thereto, or any other means, that a course of dancing instruction or a specified number of dancing lessons, or any other service or thing of value, will be furnished free of charge, at a reduced price, or for any price, unless the period or periods of *bona fide* dancing instruction or other service or thing of value is in fact furnished as represented.

2. Refusing to honor the terms and provisions of any certificate, award or offer.

3. Using (a) by telephone any quiz, puzzle, contest or other device which purports to involve, or is represented as involving, skill, competition or special selection; (b) by other means any promotion which purports to be a *bona fide* quiz, puzzle, contest or other device involving skill, competition or special selection is not involved; or (c) any *bona fide* quiz, puzzle, contest or similar device when a purpose of such promotion is to obtain leads to prospective customers and such purpose is not fully and conspicuously disclosed in the announcement or description of such promotion.

4. Using in any single day "relay salemanship", that is consecutive sales talks or efforts of more than one representative, with or without the employment of hidden listening devices, to induce the purchase of dancing instruction.

5. Using "analyses", "tests", "studio competitions", "dance derbies", or any other artifices purportedly designed to evaluate dancing ability, progress or proficiency when said artifices are not so designed or so used but are in fact to induce the purchase of dancing instruction.

6. Requesting pupils or prospective pupils to sign uncompleted contracts or agreements; evading or refusing to answer inquiries concerning amount due or payable on proposed or completed contracts or agreements; or misrepresenting to pupils or prospective pupils what is or will be due or payable.

7. Falsely representing to or assuring pupils or prospective pupils that a given course of dancing instruction will enable him or her to achieve a given standard of dancing proficiency.

8. Contracting with a pupil or prospective pupil for a specific course of dancing instruction and thereafter, prior to the completion of the given course, subjecting such pupil or prospective pupil to sales effort toward the purchase of additional lessons, unless (a) any contract for additional lessons is subject to cancellation by such pupil or prospective pupil, with or without cause, at any time up to and including one week after the completion of the units of dancing instruction previously contracted for, without cost or obligation, except that a charge may be made for not in excess of two additional lessons furnished during such week and (b) all of such units previously contracted for shall be used or completed prior to the commencement of the additional lessons.

9. Using any technique or practice similar to those set out in paragraphs 4 through 8 hereof to mislead, coerce, or induce by other unfair or deceptive means the purchase of dance instruction.

II

For purposes of this part the following definitions shall be applicable:

Total contract price shall mean the total cash price paid or to be paid by the pupil or prospective pupil for the dance instruction or dance instruction services which are the subject of the contract or written agreement.

Notice of cancellation shall be deemed to have been provided by a pupil or prospective pupil by mailing or delivering written notification to cancel the contract or written agreement or by failing to attend instructional facilities for a period of five consecutive appointment days on which classes or the provision of services which are the subject of the contract or written agreement were prearranged with the pupil or prospective pupil.

Reasonable and fair service fee shall mean no more than 10% of the total contract price for contracts of $1,000 and under. For contracts over $1,000, "reasonable and fair service fee" shall mean no more than $100 plus an amount equal to 5% of the total contract price over $1,000 (not to exceed $250 in total).

It is further ordered, That respondent Arthur Murray, Inc., a corporation, and its officers, and respondent agents, representatives and employees, directly or through any corporate or other device, or through any licensee, in connection with the solicitation, advertising or sale of dance instruction or dance instruction services which are the subject of a contract or written agreement, do forthwith cease and desist from:

1. Entering into any contract or written agreement for dance instruction or dance instruction services which are the subject of the contract or written agreement unless it clearly and

[1] Copies of the Ordering Modifying Order to Cease and Desist filed with the original document.

conspicuously discloses in the exact language below that:

This agreement is subject to cancellation at any time during the term of the agreement upon notification by the student. If this agreement is cancelled within three business days, the studio will refund all payments made under the agreement. After three business days, the studio will only charge you for the dance instruction and dance instruction services actually furnished under the agreement plus a reasonable and fair service fee.

2. Failing to refund to a pupil or prospective pupil who cancels any contract or written agreement within three business days from the date on which the contract or written agreement was executed, all payments made by the pupil or prospective pupil. Such refunds shall be provided, and any evidence of indebtedness cancelled and returned, within 30 days after receiving notice of cancellation.

3. Receiving, demanding, or retaining more than a pro rata portion of the total contract price plus a reasonable and fair service fee where a pupil or prospective pupil cancels any contract or written agreement after three business days from the date on which the contract or written agreement was executed and within the term of the said contract or written agreement. Seller must, within thirty (30) days of notice of cancellation, provide any refund payment due to the pupil or prospective pupil or must cancel that portion or the pupil's or prospective pupil's indebtedness that exceeds the amount due. The pro rata portion shall be calculated in the following manner:

(a) For the time period preceding notice of cancellation, there must be calculated the number of hours or lessons of dance instruction or dance instruction services received or attended by the pupil pursuant to the contract or written agreement.

(b) This number must be divided by the total number of hours or lessons of dance instruction or dance instruction services which are the subject of the contract or written agreement.

(c) The resulting number shall be multiplied by the total contract price.

(d) For contracts combining a course of dance instruction with dance instruction services, separate prices for the dance instruction and the dance instruction service portions must be designated and the pro rata portion of the total contract price shall be the sum of the separate pro rata obligations for the dance instruction portion and the dance instruction service portion.

4. Misrepresenting in any manner to any pupil or prospective pupil any of the provisions of this Order.

III

It is further ordered, That nothing contained in the Modified Order to cease and desist shall be construed to relieve respondent from complying with any provisions of any federal, state, or local law, rule, regulation, or order which affords greater protection to pupils or prospective pupils than the comparable provision of the Commission's order or to waive any legal rights the pupil or prospective pupil may have under the various jurisdictions.

IV

It is further ordered, That:

1. Respondent corporation deliver a copy of this Order to each of its present and future franchisees or sub-franchisees, with directions that such persons promulgate and enforce same.

2. Respondent obtain from each person described in subparagraph 1 above a signed statement setting forth his/her intention to conform his/her business practices to the requirements of this Order; if Respondent is unable to obtain such signed statements, Respondent shall notify the Federal Trade Commission of the name of the franchisee or subfranchisee which will not sign such a statement and report the reason therefore to the Federal Trade Commission.

3. Respondent institute a program of continuing surveillance adequate to reveal whether the business operation of each person described in subparagraph 1 above conform to the requirements of this Order; and

4. Respondent discontinue dealing with or terminate the use or engagement of any person described in subparagraph 1 above who continues, after notice, to engage in a continuous course of conduct involving acts or practices prohibited by this Order as revealed by the aforesaid program of surveillance. Respondent is permitted to effect such termination in accordance with applicable state laws in those states which have statutes governing franchise termination.

V

It is further ordered, That:

1. Respondent corporation forthwith distribute a copy of this Order to each of its operating divisions.

2. Respondent corporation notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the Order.

3. Respondent corporation, within one hundred fifty (150) days after service upon it of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 80-10136 Filed 4-2-80; 8:45 am]

BILLING CODE 6750-01-M

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16 CFR Part 13

[Docket No. 9073]

Ford Motor Co., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: This order reopens and modifies a consent order issued on March 29, 1979 so that Paragraph II (C)(7) of the order provides for a waiver of customers' surplus rights in the event that a dealership retains a repossessed vehicle for its own use, rather than for resale. This brings the order into conformity with one aspect of an order issued against Francis Ford, Inc. on September 21, 1979, under the same docket number.

DATES: Decision issued March 29, 1979. Modifying Order issued February 26, 1980.[1]

FOR FURTHER INFORMATION CONTACT: Bruce D. Carter, Seattle Regional Office, 10R, Federal Trade Commission, 28th Floor, Federal Bldg., 915 Second Ave., Seattle, Wash. 98174. (206) 442-4655.

SUPPLEMENTARY INFORMATION: In the Matter of Ford Motor Company, Ford Motor Credit Company, and Francis Ford, Inc., corporations. Codification, under 16 CFR Part 13, appearing at 44 FR 25630, remains unchanged.

(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))

The Order Reopening and Modifying Consent Order is as follows:

By petition of November 26, 1979, respondents Ford Motor Company and Ford Motor Credit Company (hereafter "Ford respondents") have asked the Commission to modify Paragraph II C. (7) of the Consent Order entered by the Commission against these respondents on March 29, 1979, in order to conform with a less restrictive provision of the litigated order in this docket entered against respondent Francis Ford, Inc. on

[1] Copies of the Order Reopening And Modifying Consent Order filed with the original document.

September 21, 1979. An "Order to Show Cause" as to why the requested change should not be made, dated January 15, 1980, has elicited no objection.

Paragraph VII B. of the Consent Order provides that if a final order is issued in Dockets No. 9073, 9074, or 9075 that imposes less restrictive standards in certain enumerated respects than does the Consent Order, the Commission shall reopen the Consent Order within 120 days of a petition to do so and modify the Consent Order to conform with the less restrictive provisions contained in the other order.

Although the less restrictive order upon which Ford respondents rely for their request has not yet become final, due to the pendency of an appeal, no purpose would be served by delaying modification of the Consent Order until such time as the appeal is resolved, inasmuch as the appeal by Francis Ford is hardly likely to result in imposition of a *more* restrictive standard than the Commission has imposed. Modification now will expedite achievement of uniform treatment of automobile dealers which is a primary purpose of Paragraph VII B. Therefore,

It is ordered, That the Consent Order in this docket be reopened for the limited purpose of effecting the following changes.

It is further ordered, That Paragraph II of the Consent Order be modified to eliminate the following language:

"C. The accounting system shall provide that: 7. Dealers are not to obtain waivers of surplus or redemption rights from repurchase financing customers."

It is further ordered, That Paragraph II of the Consent Order be modified to add the following language:

"C. The accounting system shall provide that: 7. Dealers are not to take any action to obtain or to attempt to obtain or bring about a waiver of a customer's rights to redeem, except in the precise manner and circumstances contemplated by the applicable state law version of Section 9–505 of the Uniform Commercial Code. Under Section 9–505 a waiver of a customer's right to a surplus may not be sought unless the dealer intends to retain the collateral for its own use for the immediate future rather than to resell the collateral in the ordinary course of business. If a waiver is sought, the dealer shall not represent that by proposing the waiver, it proposes to forego its right to a deficiency judgment, unless it intends to seek such a judgment should the waiver not be given. No customer's waiver of rights or failure to object to any secured party's proposal to retain the repossessed vehicle, unless procured in exact conformity with this subparagraph, shall limit the provisions of the accounting system relating to accounting for and paying any surplus."

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 80–10135 Filed 4–2–80; 8:45 am]

BILLING CODE 6750–01–M

16 CFR Part 13

[Docket No. C–3013]

Hair Extension of Beverly Hills, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

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 order, among other things, requires two California firms and two individuals engaged in the sale of hair replacement services to cease soliciting, selling or performing hair implants; and/or misrepresenting, in advertising or otherwise, the safety or effectiveness of the hair implant process in the treatment of baldness. Should the parties engage in any future hair replacement business, they are required to expend at least $8,000 on corrective advertising warning consumers that "Hair Implants Are Unsafe." The order also requires that the Commission notify past hair implant customers that the process is unsafe and that they should seek prompt medical attention.

DATES: Complaint and order issued March 13, 1980.[1]

FOR FURTHER INFORMATION CONTACT: Carleton Eastlake, Acting Direcor, 7R, Los Angeles Regional Office, Federal Trade Commission, 11000 Wilshire Blvd., Los Angeles, Calif. 90024. (213) 824–7575.

SUPPLEMENTARY INFORMATION: On Tuesday, October 23, 1979, there was published in the **Federal Register** 44 FR 61050, a proposed consent agreement with analysis In the Matter of Hair Extension of Beverly Hills, Inc., a corporation, also trading and doing business as Hair TransCenter, Hair Extension, Inc., a corporation, also trading and doing business as Hair TransCenter, Lee Marlow, individually and as an officer of said corporations, and Ann Marlow, individually and as an officer 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 Part 13, are as follows: Subpart-Advertising Falsely or Misleadingly: § 13.90 History of product or offering; § 13.170 Qualities or properties of product or service; 13.170–24 Cosmetic or beautifying; 13.170–30 Durability or permanence; 13.170–78 Renewing, restoring; § 13.190 Results; § 13.195 Safety; 13.195–60 Product; § 13.205 Scientific or other relevant facts. Subpart-Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; 13.533–20 Disclosures; 13.533–40 Furnishing information to media. Subpart-Disseminating Advertisements, Etc.: § 13.1043 Disseminating advertisements, etc. Subpart-Misrepresenting Oneself and Goods—Goods:§ 13.1650 History of product; § 13.1710 Qualities or properties; § 13.1730 Results; § 13.1740 Scientific or other relevent facts. Subpart-Neglecting, Unfairly or Deceptively, To Make Material Disclosure: § 13.1854 History of products; § 13.1885 Qualities or properties; § 13.1890 Safety; § 13.1895 Scientific or other relevent facts.

(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. 80–10137 Filed 4–2–80; 8:45 am]

BILLING CODE 6750–01–M

16 CFR Part 13

[Docket No. C–3012]

Shell Oil Co.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Final order.

SUMMARY: In settlement of alleged violations of federal law prohibiting

[1] Copies of the Complaint and Decision and Order filed with the original document.

unfair acts and practices and unfair methods of competition, this consent order, among other things, requires a Houston, Texas oil company to cease failing to terminate the liability of a credit card holder for any unauthorized use of the card, after being properly notified by the card holder that third-party use was no longer authorized.

DATES: Complaint and order issued March 12, 1980.[1]

FOR FURTHER INFORMATION CONTACT: Juereta P. Smith, Director, 5R, Dallas Regional Office, Federal Trade Commission, 2001 Bryan St., Suite 2665, Dallas, Texas, 75201. (214) 767–0032.

SUPPLEMENTARY INFORMATION: On Monday, Nov. 5, 1979, there was published in the **Federal Register**, 44 FR 63550, a proposed consent agreement with analysis In the Matter of Shell Oil Company, a corporation, 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 Part 13, are as follows: Subpart-Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; 13.533–20 Disclosures; 13.533–60 Release of general, specific, or contractual constrictions, requirements, or restraints. Subpart-Enforcing Dealings or Payments Wrongfully: § 13.1045 Enforcing dealings or payments wrongfully. Subpart-Failing To Comply With Affirmative Statutory Requirements: § 13.1048 Failing to comply with affirmative statutory requirements; 13.1048–45 Truth in Lending Act.

(Sec. 6, 38 Stat. 721; (15 U.S.C. 46). Interpret or apply sec. 5, 38 Stat. 719, as amended; 82 Stat. 146, 147; (15 U.S.C. 45, 1601, *et seq.*))

Carol M. Thomas,

Secretary.

[FR Doc. 80-10138 Filed 4-2-80; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Complaint and Decision and Order are filed with the original document.

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1015

Procedures for Disclosure or Production of Information Under the Freedom of Information Act; Revisions for Briefing Packages and Draft Documents

AGENCY: Consumer Product Safety Commission.

ACTION: Final revisions to Freedom of Information Act regulation.

SUMMARY: In this document the Consumer Product Safety Commission revises its Freedom of Information Act regulation to clarify the availability of draft Commission staff documents and Commission staff briefing packages. The present regulation treats these documents differently from other Commission documents and fails to make clear that these documents will not be made available if disclosure is barred by statute or if the documents are exempt from mandatory disclosure and disclosure is contrary to the public interest. Under the revision, draft staff documents that are agency records and staff briefing packages will be available upon request in the same manner as other Commission records. Additionally, the revision provides that briefing packages that would be released upon request under the FOIA and the Commission's FOIA regulation will be made available in the Commission's public reference facility after they are forwarded to the Commissioners.

EFFECTIVE DATE: April 3, 1980.

FOR FURTHER INFORMATION CONTACT: Alan H. Schoem, Office of the General Counsel, Consumer Product Safety Commission, Washington, D.C. 20207, telephone (202) 634–7770.

SUPPLEMENTARY INFORMATION: On February 22, 1977, the Commission published in the **Federal Register** its final Freedom of Information Act (FOIA) Regulation (42 FR 10490), codified at 16 CFR Part 1015. The regulation, among other things, specifically addresses the public availability of draft staff documents and staff briefing packages. 16 CFR 1015.15 (b) and (c). In a December 31, 1979 notice, 44 FR 77196, the Commission proposed to revise these sections of its FOIA regulation to clarify that such documents will be available upon request in the same manner as other Commission documents. Additionally, the Commission proposed the revision to clarify the availability of briefing packages in the Commission's public reference facility after transmittal to the Commissioners. No comments on the proposed revision were received by the Commission.

The revision to § 1015.15 (b) and (c) clarifies that the Commission will consider draft documents no differently from other documents requested under the FOIA. Under the amended regulation, the decision whether to release a particular document will be made on a case-by-case basis applying the FOIA and the Commission's FOIA regulation.

Additionally, the revision to § 1015.15(c) clarifies that briefing packages are, for purposes of the FOIA, subject to the same standards as other Commission records. The Commission expects however, that few requests for such documents will be made under the FOIA. This is because under the revision to § 1015.15(c), briefing packages, or the portions thereof, determined by the Secretary, with the advice of the Office of the General Counsel, to be available to the public, will be placed in the Commission's public reading room promptly after transmittal to the Commissioners.

Accordingly, § 1015.15 is amended by revising paragraphs (b) and (c) to read as follows:

§ 1015.15 Purpose and scope.

* * * * *

(b) No identifiable record requested in accordance with the procedures contained in this part shall be withheld from disclosure unless it falls within one of the classes of records exempt under 5 U.S.C 552(b). The Commission will make available, to the extent permitted by law, records authorized to be withheld under 5 U.S.C. 552(b) unless the Commission determines that disclosure is contrary to the public interest. In this regard the Commission will not ordinarily release documents that provide legal advice to the Commission concerning pending or prospective litigation where the release of such documents would significantly interfere with the Commission's regulatory or enforcement proceedings.

(c) Draft documents that are agency records are subject to release upon request in accordance with this regulation. However, in order to avoid any misunderstanding of the preliminary nature of a draft document, each draft document released will be marked to indicate its tentative nature. Similarly, staff briefing packages, which have been completed but not yet transmitted to the Commission by the Office of the Secretary are subject to release upon request in accordance with this

regulation. Each briefing package or portion thereof released will be marked to indicate that it has not been transmitted to or acted upon by the Commission. In addition, briefing packages, or portions thereof, which the Secretary upon the advice of the Office of the General Counsel has determined would be released upon request in accordance with this regulation, will be publicly available in the public reference facility established under § 1015.2 promptly after the briefing package has been transmitted to the Commissioners by the Office of the Secretary. Such packages will be marked to indicate that they have not been acted upon by the Commission.

* * * * *

§ 1015.17 [Amended]

Section 1015.17 is amended by deleting the phrase "or draft document" in § 1015.17, line 4; § 1015.17(a), line 4; and § 1015.17(b), lines 3–4.

(Consumer Product Safety Act, (15 U.S.C. 2051); the Federal Hazardous Substances Act, (15 U.S.C. 2161); the Poison Prevention Packaging Act of 1970, (15 U.S.C. 1471); the Refrigerator Safety Act, (15 U.S.C. 1211); the Flammable Fabrics Act, (15 U.S.C. 1191); and the Freedom of Information Act, (5 U.S.C. 552))

Dated: March 25, 1980.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 80-10160 Filed 4-2-80; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

20 CFR Part 404

Federal Old-Age, Survivors and Disability Insurance Benefits; Wage Credits for Veterans and Members of the Uniformed Services

Correction

In FR Doc. 80-7912, appearing at page 16463 in the issue for Friday, March 14, 1980, make the following correction:

On page 16467, in the first column, in § 404.1325, in paragraph (f), in the fifth line, the word "kidnaping" should be spelled "kidnapping" and should be followed by a comma (,).

BILLING CODE 1505-01-M

DEPARTMENT OF JUSTICE

Attorney General

28 CFR Part 0

[Order No. 884-80]

Delegations Respecting Claims Against the Federal Bureau of Investigation

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This order creates a new § 0.89a under Subpart P of Part 0, 28 CFR, in which authority of the Director of the Federal Bureau of Investigation delegated from the Attorney General respecting claims against the Bureau is consolidated. The order authorizes the Director to exercise the authority of the Attorney General under 31 U.S.C. 224b to certify certain claims against the Bureau for non-negligent property damage for payment to the Congress. The order also transfers, with minor editorial changes, the provision at 28 CFR 0.85(k) to paragraph (a) of the new section. This latter provision delegates limited settlement authority under the Federal Tort Claims Act to the Director. Finally, the order authorizes limited redelegation of both authorities.

EFFECTIVE DATE: March 25, 1980.

FOR FURTHER INFORMATION CONTACT: John A. Mintz, Assistant Director—Legal Counsel, Federal Bureau of Investigation, Washington, DC 20535 (202–324–5018).

SUPPLEMENTARY INFORMATION: The Department has not invited public comment on this rule because its subject is limited to a matter of internal Departmental procedure. the Department has, further, determined that this rule is not significant for purposes of Executive Order 12044.

By virtue of the authority vested in me by 28 U.S.C. 509 and 510 and 5 U.S.C. 301, Subpart P of Part 0 of Chapter 1 of Title 28, Code of Federal Regulations, is amended by adding the following new § 0.89a to read as follows:

§ 0.89a Delegations respecting claims against the FBI.

(a) The Director of the Federal Bureau of Investigation is authorized to exercise the power and authority vested in the Attorney General under 28 U.S.C. 2672 to consider, ascertain, adjust, determine, and settle any claim thereunder not exceeding $5,000 in any one case caused by the negligent or wrongful act or omission of any employee of the Federal Bureau of Investigation.

(b) The Director of the Federal Bureau of Investigation is further authorized to exercise the power and authority vested in the Attorney General under the Act of March 20, 1936, Ch. 159, Pub. L. 74–481, 49 Stat. 1184 (31 U.S.C. 224b) with regard to claims thereunder not exceeding $500 in any one case.

(c) The Director of the Federal Bureau of Investigation is authorized to redelegate to the Assistant Director, Legal Counsel Division, or his designee within that division, any of the authority, functions, or duties vested in him by paragraphs (a) and (b) of this section. This authority shall not be further redelegated.

§ 0.85 [Amended]

Subpart P of Part 0 of Chapter 1 of Title 28, Code of Federal Regulations, is further amended to delete paragraph (k) of § 0.85.

Dated: March 25, 1980.

Benjamin R. Civiletti,

Attorney General.

[FR Doc. 80-10134 Filed 4-2-80; 8:45 am]

BILLING Code 4410-01-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

Everglades National Park Fishing and Boating Regulations; Correction

AGENCY: National Park Service, Interior.

ACTION: Correction of final rule.

SUMMARY: On February 15, 1980, the National Part Service published in the **Federal Register** (45 FR 10350), final regulations governing fishing and boating activities in Everglades National Park. Section (f)(17) entitled *Bag Limits* contains an error in designating a subsection and a phrase relating to mullet and pompano harvest was inadvertently omitted.

EFFECTIVE DATE: April 3, 1980.

FOR FURTHER INFORMATION CONTACT: Richard H. Dawson, Resource Management Specialist, Everglades National Park, Telephone: (305) 247–6211.

SUPPLEMENTARY INFORMATION: Final regulations governing fishing and boating activities at Everglades National Park were published in the **Federal Register** on February 15, 1980 (45 FR 10350). Paragraph (f)(17) of § 7.45 of Title 36 CFR entitled *Bag Limits* (45 FR 10354) contains an error designating a subsection. The subsection excluding bait fish from the bag limit should be corrected from the (f)(7) designation, as published, to (f)(6). In addition to the error, a phrase was inadvertently

omitted relating to mullet and pompano harvest within the part. The phrase, which is used to clarify that mullet and pompano harvest is permitted by persons, firms, or corporations holding a valid commercial park fishing permit for netting, should be added to the (f)(17) subsection. Since this phrasing was used in the previously published proposed rules on September 14, 1979 (44 FR 53541) and was discussed in the preamble of the **Federal Register** published on February 15, 1980, public notice and comment is not considered necessary.

Therefore, in consideration of the foregoing, on page 10354 of FR Doc. 80–5186 dated February 15, 1980, paragraph (f)(17) of § 7.45 should read as follows:

§ 7.45 Everglades National Park.

* * * * *

(f) * * *

(17) *Bag Limits.* No person shall take, have in his possession, buy, offer for sale, sell, or unnecessarily destroy, at any time more than: Ten (10) fish of one species, excluding bait fish, as stated in paragraph (f)(6) of this section, and not totally more than twenty (20) fish of all species, excluding bait fish, with the exception of persons, firms, or corporations holding a valid commercial park fishing permit for mullet and pompano netting only.

* * * * *

(Sec. 3 of the Act of August 25, 1916 (39 Stat. 535, as amended, 16 U.S.C. 3); 245 DM 1 (27 FR 6395) as amended; and National Park Service Order 77 (38 FR 7478, as amended).

Daniel J. Tobin, Jr.,

Associate Director, Management and Operations.

[FR Doc. 80–10159 Filed 4–2–80; 8:45 am]

BILLING CODE 4310–70–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

National Flood Insurance Program; Final Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the nation.

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

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

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426–1460 or Toll Free Line (800) 424–8872 (In Alaska and Hawaii call Toll Free (800) 424–9080), Room 5150, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for each community listed.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection 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 44 CFR 67.8 (presently appearing at its former Title 24, Chapter 10, § 1917.8 of the Code of Federal Regulations). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided, and the Administrator has resolved the appeals presented by the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 44 CFR Part 67 (formerly 24 CFR Part 1910).

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

Final Base (100-year) Flood Elevations

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Hawaii	Honolulu, City and County (Docket No. FI–4167).	Hoolapa Stream	1,430' downstream from Kamehameha Highway	*6
			200' downstream from Kamehameha Highway	*17
			170' upstream from Kamehameha Highway	*27
			360' upstream from Kamehameha Highway	*35
		Kalaeokahipa Stream	2,100' downstream Kamehameha Highway	*8
			100' downstream Kamehameha Highway	*18
			At Kamehameha Highway	*20
			375' upstream Kamehameha Highway	*25
			775' upstream Kamehameha Highway	*31
		Ohia Stream	995' downstream Kamehameha Highway	*7
			Kamehameha Highway (Downstream side)	*10
			330' upstream Kamehameha Highway	*16
			840' upstream Kamehameha Highway	*23
		Ohia Stream (East)	1,880' downstream Kamehameha Highway	*8
			120' downstream Kamehameha Highway	*11
		Kaipapau Stream	90' downstream of Kamehameha Highway	*10
			50' upstream of Kamehameha Highway	*14
			2,250' upstream of Kamehameha Highway	*67
		Waipilopilo Stream	150' upstream from Kamehameha Highway	*9
			1,140' upstream from Kamehameha Highway	*29
		Hanahimoa Stream	195' upstream Kamehameha Highway	*8
			1,260' upstream Kamehameha Highway	*31
		Kaluanui Stream	750' upstream of mouth	*8
			250' downstream from Plantation Road	*23
		Punaluu Stream	600' upstream of mouth	*8
			2,900' upstream from Kamehameha Highway	*23
		Kahana Stream	3,180' upstream of mouth	*9
			7,740' upstream of mouth	*20
		Kaaawa Stream	350' upstream of Kamehameha Highway	*9
			2,750' upstream from Kamehameha Highway	*34
		Waikane Stream	Confluence with Kaneohe Bay	*8
			Kamehameha Highway (Upstream)	*15
			3,085' upstream Kamehameha Highway	*50

Final Base (100-year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Waiahole Stream	Confluence with Kaneohe Bay	*7
			At Kamehameha Highway	*14
			2,670' upstream Kamehameha Highway	*35
		Heeia Stream	At Kamehameha Highway	*4
			5,300' above confluence with Kaneohe Bay	*20
			At Alaloo Street	*53
			1,750' upstream Alaloo Street	*88
		Keaahala Stream	At the mouth	*2
			120' downstream Wailele Road	*10
			1,000' upstream of Wailele Road	*49
			At Kamehameha Highway	*78
			At Private Road (Upstream side)	*85
			At Pahia Road	*98
			Downstream side of Anoi Road	*114
		Kawa Stream	Confluence with Kaneohe Bay	*3
			150' downstream of Kaneohe Bay Drive	*23
			Upstream side of Kaneohe Bay Drive	*38
			Confluence of Tributary to Kawa Stream	*60
			1,220' upstream side of Namoku Street	*98
		Tributary to Kawa Stream	Confluence with Kawa Stream	*60
			740' upstream from confluence	*72
			15' downstream from Mokulele Drive	*86
		Waimanalō Stream	At Tinker Road	*12
			Kalanianaole Highway Upstream	*24
			Private Road Downstream	*54
			Private Road Upstream	*61
			1,070' upstream of Private Road	*73
		Waimanalo Stream	Confluence with Waimanalo Stream	*16
			Confluence with Stream B	*35
		Stream A	25' downstream of Mahailua Street	*66
			Kakaina Street (Downstream)	*114
			Kakaina Street (Upstream)	*120
		Waimanalo Stream	Confluence with Stream A	*35
			Kakaina Street (Upstream)	*44
		Stream B	845' upstream Kakaina Street	*58
			40' downstream of Waikupanaha Street	*119
		Waimanalo Stream	2,010' downstream Hihimanu Street	*18
			At Hihimanu Street Upstream	*33
		Stream C	Mokulama Street Upstream side	*55
			40' downstream of Waikupanaha Street	*122
		Waimanalo Stream	120' upstream from confluence with Stream C	*17
			At Hihimanu Street (Upstream)	*31
		Stream D	Downstream Lahiki Street	*45
			Makakaio Street	*71
			Upstream Lahiki Street	*97
			20' downstream of Waikupanaha Street	*125
		Waimanalo Stream	420' upstream of mouth	*5
			Huges Road	*14
		Inoaole Stream	At Hihimanu Street	*21
			2,280' upstream from Hihimanu Street	*60
		Wailupe Stream	At Kalanianaole Highway (Downstream)	*6
			Hind Drive (Upstream)	*34
			Ani Street	*118
			190' upstream of Ani Street	*128
		Kului Stream	Confluence with Wailupe Stream	*123
			75' upstream of Hindiuka Drive	*139
			1,138' upstream Hindiuka Drive	*251
		Wailaeiki Stream	At the mouth	*6
			At Wailolo Street	*13
			Kalanianaole Highway (Downstream)	*16
		Kapakahi Stream	At Kahala Avenue (Upstream)	*6
			Confluence with Wailae-Nui Stream	*24
			125' downstream of Kalanianaole Highway	*33
			Alikoa Street	*39
			At Malia Street	*67
			At Helekoa Drive (Upstream)	*67
			1,565' upstream from Halekoa Drive	*205
		Waialae-Nui Stream	Confluence with Kapakahi Stream	*24
			Malia Street (Upstream)	*60
			550' upstream of Malia Street	*80
		Waialoe Major Drain	Kilaue Avenue Upstream	*16
			At Hunakai Street (Upstream)	*45
			50' downstream of Interstate H-1 Freeway	*46
		Kalihi	2,765' downstream from King Street	*15
			At King Street Downstream	*43
		Moanalua Stream Lower	Kamehameha Highway (Upstream)	*7
			Kikowena Street (Upstream)	*11
		Moanalua Stream Upper	At Moanalua Lakeside Access Road	*87
			Ala Aoloa Loop (Upstream)	*167
			4,060' upstream from Ala Aoloa Loop	*252
		Kahauiki Stream	Confluence with Moanalua Stream (Lower)	*7
			2,600' above confluence with Moanalua Stream (Lower)	*11
		East Makaha Stream	2,330' downstream of Kaulawaha Road	*13
			Kaulawaha Road (Upstream)	*44
			1,450' upstream of Kaulawaha Road	*80
		West Makaha Stream	Farrington Highway (Upstream)	*10
			Kili Drive (Upstream)	*16
			4,300' upstream of Kili Drive	*142
		Kiikii Stream	630' downstream of Waialua Road	*10

Final Base (100-year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Waialua Road (Upstream)	*13
			Confluence with Kaukonahua Stream	*16
		Kaukonahua Stream	Confluence with Kikii Stream	*16
			Farrington Highway (Upstream)	*20
			Cane Haul Road (Upstream)	*30
			2,700' upstream of Canettaul Road	*44
		Poamoho Stream	Confluence with Kaukonahua Stream	*16
			Kaukonahua Road (Downstream)	*22
			1,100' upstream of Kaukonahua Road	*30
		Paukauila Stream	3,250' downstream of Kamehameha Highway	*8
			Confluence with Helemano Stream	*13
		Helemano Stream	Confluence with Paukauila Stream	*13
			3,500' upstream of Kamehameha Highway	*27
		Opaeula Stream	Confluence with Paukauila Stream	*13
			Twin Bridge Road (Upstream)	*20
			2,170' upstream of Twin Bridge Road	*36
		Anahulu River	300' upstream of Kamehameha Highway	*8
			At Cane Haul Road	*16
			930' upstream of Cane Haul Road	*22
		Wailmea River	3,065' upstream of mouth	*18
			3,720' upstream of mouth	*27
		Paumalu Stream	470' upstream of mouth	*18
			2,250' upstream of mouth	*79
		Pahipahialua Stream	900' upstream of mouth	*18
			2,580' upstream of mouth	*52
		Kaelepulu Stream	Kawailoa Road (Upstream)	*2
			4,000' upstream of mouth	*5
		Pacific Ocean (Tsunami)	Confluence with Pahipahialua Stream	*18
			Kawela Bay	*17
			Kahuku Point	*17
			Makahoa Point	*12
			Lanihuli Street extended to coastline	*12
			Confluence with Kokololio Stream	*8
			Pokiwai Place extended to coastline	*10
			Confluence with Paumalu Stream	*19
			Confluence with Waimea River	*18
			Kawailoa Drive extended to coastline	*22
			Kamani Lane extended to coastline	*18
			Confluence of Kaaawa Stream with Kaneohe Bay	*10
			Confluence with Hakipuu Stream	*4
			Confluence of Kahana Stream with Kahana Bay	*8
			Hoomana Place extended to coastline	*12
			Crozier Drive extended to coastline	*14
			Irwin Street extended to coastline	*13
			Confluence with Makaha Stream	*12
			Jade Street extended to coastline	*16
			Ehukai Street extended to coastline	*9
			Wailea Point	*6
			Pokai Bay	*13
			Confluence with Mailiili Channel	*16
			Confluence with Nanakui Stream	*13
			Confluence with Kalihi Stream with Keehi Lagoon	*4
			Mokauea Street extended to coastline	*5
			Paoa Place extended to coastline	*6
			Confluence with Kapakahi Stream	*5
			Confluence of Niu Stream with Maunalua Bay	*5
			Confluence of Kuliouou Stream with Maunalua Bay	*6
			Kealahou Street extended to coastline	*13
			300' north of Kahe Point along coastline	*10
			Barber's Point	*9
			Ewa Beach	*8
			Confluence with Kaloi Gulch	*8
	Maps available at the City Clerk's Office, City Hall, Honolulu, Hawaii.			
Louisiana	Town of Berwick, St. Mary Parish (FI-5240).	Atchafalaya River	Berwick South Highway extended	*11
			Just downstream of Southern Pacific Railroad	*12
		Berwick Bay	Old Spanish Trail extended	*14
		Ponding Area A	Just east of the intersection of U.S. Route 90 and Berwick South Highway.	*5
			Intersection of John Street and Gilmore Drive	*5
		Ponding Area B	Just west of the intersection of Berwick South Highway and U.S. Route 90.	*3
			Northwest of the intersection of Mitchell's Alley and River Road	*3
		Sheet Flow Area	Intersection of Mound Street and Second Street	*1
	Maps available at the City Clerk's Office, City Hall, Berwick, Louisiana 71342.			
Louisiana	Unincorporated areas of St. Mary Parish (FI-5241).	Bayou Teche	Confluence of Charenton Drainage and Navigation Canal	*10
			Just downstream of Missouri Pacific Railroad at Mount Horeb Church	*8
			Willow Street extended	*7
			Confluence with Lower Atchafalaya River	*5
		Wax Lake Outlet	Just upstream of Southern Pacific Railroad	*12
		Lower Atchafalaya River	Just downstream of Southern Pacific Railroad near Bayou Boeuf	*12
			Utah Street (extended)	*12
			Confluence of Bayou Boeuf	*12
		Lower Atchafalaya River (Levee Overtopping).	Area just south of Morgan City and north of Bayou Boeuf	*8
			Area bounded by the west end of Lake Palourde, the east end of Morgan City, Lakeside Subdivision and the Intracoastal Waterway.	*5

Final Base (100-year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Area bounded by Morgan City on the west and Bayou Ramos on the east.	*5
			Areas bounded by Wax Lake Outlet to the west and northwest and Bayou Teche to the southwest.	*4
		Gulf of Mexico	The area south of Bayou Teche, southwest of Franklin and north of the Franklin Oil Field.	*9
			Areas south of the Southern Pacific Railroad at Wyandotte, just north of the Intracoastal Waterway.	*7
			The area south of Verdunville, west of Bayou Teche	*5
Maps available at the Parish Engineer's Office, St. Mary Parish Courthouse, Fifth floor, Franklin, Louisiana 70538.				
Tennessee	Chattanooga, City, Hamilton County (Docket No. FI-5407).	Tennessee River	Downstream Corporate Limits	*651
			Walnut Street	*657
			Downstream of Chickamauga Dam	*661
			Upstream Corporate Limits	*686
		Mountain Creek	Confluence w/Tennessee River	*653
			North Runyan Road	*663
			Valley Bridge Road	*683
			Upstream limit of detailed study	*714
		Stringers Branch	Confluence with Mountain Creek	*653
			Upstream Corporate Limits	*653
		Lookout Creek	Confluence with Tennessee River	*655
			Dixie Highway	*655
			Upstream Corporate Limits	*658
		Chattanooga Creek	Confluence with Tennessee River	*655
			East 38th Street	*657
			Wilson Road	*659
			Upstream Corporate Limits	*663
		South Chickamauga Creek	Confluence with Tennessee River	*659
			Lightfoot Mill Road	*668
			Shallowford Drive	*673
			Upstream Corporate Limits	*691
		West Chickamauga Creek	Confluence with South Chickamauga Creek	*677
			Upstream Corporate Limits	*677
		Spring Creek	Confluence with West Chickamauga Creek	*677
			Upstream Corporate Limits	
		North Chickamauga Creek	Confluence with Tennessee River	*661
			Hamill Road	*664
			Old Hixon Pike	*668
			Upstream Corporate Limits	*670
Maps available at the City Hall, Chattanooga, Tennessee.				

(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 delegation of authority to Federal Insurance Administrator, 44 FR 20963)

Issued: March 6, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-9950 Filed 4-2-80; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

National Flood Insurance Program; Final Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FIA.

ACTION: Final Rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the nation.

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

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

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. R. Gregg Chappell, National Flood Insurance Program, (202) 426–1460 or Toll Free Line (800) 424–8872 (in Alaska and Hawaii Call Toll Free (800) 424–9080), Room 5150, 451 Seventh Street, S.W., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determination of flood elevations for each community listed.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection 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 44 CFR Part 67.11). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 44 CFR Part 60.

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

Final Base (100-year) Flood Elevations

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Alaska	Valdez (City), Unorganized Borough [Docket No. FE-5497].	Lowe River	Dayville Road (100 feet) downstream from centerline	*22
			Dayville Road (110 feet) upstream from centerline	*27
			Pipeline Access Road (100 feet) downstream from centerline	*47
			Pipeline Access Road (100 feet) upstream from centerline	*53
		Valdez Glacier Stream	Intersection of Mineral Creek Road and Richardson Highway	*4
			Intersection of Valdez Airport Road and Richardson Highway	*4
			Northeast Corner of Northernmost Runway at Valdez Airport	*6
			Approximately 13,000 feet northeast along New Valdez Glacier Road from its intersection with Richardson Highway.	*11
		Port Valdez	100 feet downstream of northern face of Dayville Road Bridge over Allison Creek.	*11
			Intersection of Kenicott Avenue and North Harbor Drive	*11
		Robe Lake	At confluence of Robe River	*28
		Robe River	Approximately 2000 feet southeast along Richardson Highway from its intersection with New Valdez Glacier Road.	*2
			Southwest side of Richardson Highway, 400 feet northwest of its intersection with Dayville Road.	*3
	Maps available at City Hall, Pioneer Drive, Valdez, Alaska.			
Arkansas	City of Mammoth Springs, Fulton Co. [FEMA-5738].	Spring River	Just downstream of State Hwy 63	*502
		Warm Fork, Spring River	Just downstream of St. Louis-San Francisco Railway	*504
		Town Branch	Just upstream of State Highway 63	*506
			Just upstream of Bronson Avenue	*524
	Maps available at City Hall, 110 Main Street, Mammoth Springs, Arkansas 72554.			
California	Glenn County, Unincorporated Areas [Docket No. FEMA-5728].	Walker Creek	County Road 35 at centerline	*160
			County Road 33, 30 feet upstream in centerline	
		Stony Creek	Tehama-Colusa Canal 100 feet upstream from centerline	*167
				*230
			Interstate Highway 5 at centerline	*264
		Hambright Creek	State Highway 99 West at centerline	*256
			County Road G at centerline	*276
			County Road FF, 25 feet upstream from centerline	*285
		South Fork Willow Creek (Sheet Flow).	Intersection of County Road KK and County Road 48	#1
			Intersection of Garden Street and Second Street	*130
		South Fork Willow Creek (Ponding).	Intersection of Green Street and Butte Street	*136
			Intersection of State Highway 99 West and County Road 45	*139
		Wilson Creek (Ponding)	2000 feet southwest of the intersection of Interstate Highway 5 and County Road 39.	*148
		Walker Creek (Ponding)	Intersection of County Road 47 and County Road 48	*130
	Maps are available at County Planning Department, County Courthouse, 526 West Sycamore, Willows, California.			
Colorado	Douglas County (Unincorporated Areas) [Docket No. FEMA-5728].	Plum Creek	Titan Road 150 feet downstream from centerline	*5,529
			Titan Road 50 feet upstream from centerline	*5,536
			Denver and Rio Grande Western Railroad 50 Feet upstream from Centerline.	*5,636
			Unnamed Road 25 feet upstream from centerline	*5,647
			West Rio Grande Avenue 25 feet upstream from centerline	*5,740
			Confluence with East Plum and West Plum Creeks	*5,770
		East Plum Creek at Sedalia	State Highway 67 100 feet upsteam from centerline	*5,785
		Indian Creek	Rainbow Creek Road 25 feet upstream from centerline	*5,932
			Cherokee Drive 25 feet upstream from centerline	*5,986
			Apache Drive 25 feet upstream from centerline	*6,078
		West Plum Creek	Perry Park Road (first crossing) 50 feet upstream from centerline	*6,339
			Red Rock Drive 25 feet upstream from centerline	*6,430
			Private Road 25 feet upstream from centerline	*6,467
		East Plum Creek at Larkspur	Interstate Highway 25, 125 feet upstream from centerline	*6,599
			County Road No. 18, 25 feet upstream from centerline	*6,620
			Perry Park Avenue 50 feet upstream from centerline	*6,662
			Spruce Mountain Road 50 feet upstream from centerline	*6,697
		Hangmans Gulch	Confluence with East Plum Creek	*6,100
			Denver and Rio Grande Western Railroad 25 feet upstream from centerline.	*6,145
			Interstate Highway 25, 140 feet upstream from centerline	*6,195
			Corporate Limits (2nd crossing) 10 feet upstream from centerline	*6,286
		East Plum Creek at Castle Rock	Confluence with Hangmans Gulch 50 feet upstream from centerline	*6,100
			U.S. Highway 85, 50 feet upstream from centerline	*6,214
		Sellers Gulch	Dirt Road (first crossing) 25 feet upstream from centerline	*6,267
			Dirt Road (second crossing) 25 feet upstream from centerline	*6,317
		Unnamed Tributary to Sellers Gulch.	County Road 25 feet upstream from centerline	*6,255
		Carpenter Creek	Denver and Rio Grande Western Railroad 125 feet upstream from centerline.	*6,841
			County Road No. 74, 50 feet upstream from centerline	*6,895
		Cherry Creek	Arapahoe and Douglas County Limits 40 feet upstream from centerline.	*5,710
			West Parker Road 160 feet upstream from centerline	*5,814
			Stroh Avenue 50 feet upstream from centerline	*5,905
			Scott Road 40 feet upstream from centerline	*5,967
			County Road 40 feet upstream from centerline	*6,040
		Happy Canyon Creek	Corporate Limits 50 feet upstream from centerline	*5,725
			Dogwood Avenue 50 feet upstream from centerline	*5,811
			Birch Avenue 50 feet upstream from centerline	*5,834
			West Parker Road 100 feet upstream from centerline	*5,850
			First Street 125 feet upstream from centerline	*5,857

Final Base (100-year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Newlin Gulch	Confluence with Cherry Creek	*5,773
			Jordan Road 50 feet upstream from centerline	*5,819
			Dirt Road 100 feet upstream from centerline	*6,004
		Baldwin Gulch	Confluence with Cherry Creek 150 feet upstream from centerline	*5,759
			Pine Street 35 feet upstream from centerline	*5,774
			Pine Drive 25 feet upstream from centerline	*5,894
			Soil Conservation Service Flood Control Dam 25 feet upstream from centerline.	*5,958
			Antelope trail 25 feet upstream from centerline	*6,041
		Sulphur Gulch	Confluence with Cherry Creek	*5,816
			Parker Road (State Highway 83) 15 feet upstream from centerline	*5,850
			County Road No. 9, 25 feet upstream from centerline	*6,119
		Tallman Gulch	Siebert Circle (1st crossing) 75 feet upstream from centerline	*5,893
			Unnamed Road 25 feet upstream from centerline	*5,968
		Bayou Gulch	Confluence with Cherry Creek 50 feet upstream from centerline	*5,997
			State Highway 83, 150 feet upstream from centerline	*6,024
			Dirt Road 100 feet upstream from centerline	*6,205
		South Platte River	State Highway 67, 50 feet upstream from centerline	*6,388
			County Road 126, 40 feet upstream from centerline	*6,400
		Horse Creek	Dirt Road 75 feet upstream from centerline	*6,406
		West Creek	Dirt Road 15 feet upstream from centerline	*7,414
			Unnamed Road (2nd crossing) 25 feet upstream from centerline	*7,460
			National Forest Access Road Number 200, 25 feet upstream from centerline.	*7,482
	Maps available at Planning and Zoning Department, 355 South Wilcox Street, Castle Rock, Colorado.			
Delaware	Ocean View, Town, Sussex County [Docket No. FEMA-5738].	Indian River Bay	All areas between Assawoman Canal and Route 26, adjacent to White Creek and White Creek Ditch.	*6
	Maps available at the Town Hall, Ocean View, Delaware.			
Florida	City of Orlando, Orange County [FI-5673].	Lake Winyah	Entire Shoreline	*75
		Lake Estelle	Entire Shoreline	*75
		Lake Rowena	Entire Shoreline	*75
		Lake Formosa	Entire Shoreline	*75
		Lake Ivanhoe	Entire Shoreline	*81
		Lake Highland	Entire Shoreline	*81
		Park Lake	Intersection of Park Lake Court and Park Lake Circle	*96
		Lake Dot	Entire Shoreline	*95
		Lake Eola	Entire Shoreline	*91
		Lake Lucerne	Entire Shoreline	*89
		Lake of the Woods	Entire Shoreline	*80
		Lake Copeland	Entire Shoreline	*80
		Lake Beauty	Entire Shoreline	*95
		Lake Lurna	Entire Shoreline	*93
		Lake Cherokee	Intersection of Cherokee Dr. and Osceola Ave.	*75
		Lake Davis	Intersection of Cherokee Dr. and Davis Dr.	*75
		Lake Lancaster	Entire Shoreline	*75
		Lake Olive	Entire Shoreline	*77
		Lake Lawsona	Entire Shoreline	*76
		Lake Weldona	Entire Shoreline	*76
		Lake Greenwood	Entire Shoreline	*76
		Fern Creek	Just downstream of South St.	*76
			Just downstream of Livingston Ave.	*98
		Lake Como	Entire Shoreline	*102
		Lake Baldwin	Entire Shoreline	*95
		Lake Susannah	Entire Shoreline	*99
		Lake Barton	Entire Shoreline	*96
		Lake Theresa	Entire Shoreline	*113
		Lake Underhill	Entire Shoreline	*102
		Lake Arnold	Entire Shoreline	*100
		Lake Giles	Entire Shoreline	*107
		Lake Rabama	Entire Shoreline	*111
		Pineloch Lake	Entire Shoreline	*96
		Turkey Lake	Entire Shoreline	*98
		Clear Lake	Entire Shoreline	*97
		Shingle Creek	Just upstream of Conroy Road	*97
			Just downstream of the Northern corporate limits	*98
		Sunset Lake	Entire Shoreline	*99
		Lake Beardall	Intersection of Colyer St. and Rio Grande Ave.	*100
		Lake Lorna Doone	Entire Shoreline	*102
		Lake Concord	Entire Shoreline	*81
		Lake Adair	Entire Shoreline	*82
		Spring Lake	Entire Shoreline	*92
		Lake Fairhope	Entire Shoreline	*96
		Lawne Lake	Entire Shoreline	*90
		Lake Orlando	Intersection of Lake Orlando Parkway and Rosamond Dr.	*90
		Lake Fairview	Entire Shoreline	*91
		Bay Lake	Entire Shoreline	*95
		Lake Mann	Entire Shoreline	*95
		Lake Walter	Entire Shoreline	*97
	Maps available at City Hall, 400 South Orange Avenue, Orlando, Florida 32801.			
Florida	City of Palm Bay, Brevard County [FI-5507].	Turkey Creek	Just upstream of U.S. HW 1	*7
			Approximately 200 feet upstream of Port Malabar Blvd	*15
			Just upstream of Interstate 95	*21

Final Base (100-year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Turkey Run	Just upstream of Troutman Boulevard	*13
			Approximately 800 feet upstream of Knecht-Road	*18
		Indian River	Port Malabar Boulevard (extended)	7
		Channel C	Approximately 250 feet east of the intersection of Port Malabar Boulevard and Pebble Beech Avenue.	*24
		St. John River	Krassner Drive	*24
			Garvey Road	*24
Maps available at Building Department, City Hall, 175 N.W., Palm Bay Road, Palm Bay, Florida 32905.				
Idaho	Caldwell Canyon County [Docket No FEMA-5748].	Boise River	Intersection of West Belmont Street and Riverside Canal	*2,351
			Intersection of West Elgin Street and Boise Avenue	*2,353
			Intersection of West Galveston Street and Boise Avenue	*2,354
			Intersection of river and West Plymouth Street	*2,361
		Indian Creek	Intersection of creek and Sewer Plant Road	*2,349
			Intersection of creek and Riverside Canal	*2,352
			25 feet upstream from center of Stock Bridge	*2,377
			30 feet downstream from center of Elm Lane	*2,393
			Intersection of creek and Ustick Road	*2,411
Maps available at City Hall, 704 Blaine Street, Caldwell, Idaho.				
Idaho	Middleton (City) Canyon County [Docket No. FEMA-5738].	Boise River	400 feet upstream from confluence with Willow Creek	*2,382
			120 feet upstream from confluence with Mill Creek	*2,384
		Willow Creek	70 feet upstream from center of State Highway 44 (Main Street)	*2,401
			Intersection of Concord Street and Elderberry Drive	*2,411
			Intersection of 8th Street North and Hawthorne Drive	*2,413
Maps available at City Hall, 15 North Dewey, Middleton, Idaho.				
Illinois	Countryside (City) Cook County [Docket No. FEMA-5748].	Peck Avenue Ditch	Intersection of 55th Place and Peck Avenue	*676
			Intersection of Peck Avenue and Plainfield Road	*677
		East Avenue Ditch	Intersection of East Avenue and 57th Street	*648
			Intersection of Lorraine Drive and Rose Court	*648
			East side of intersection of LaGrange Road and 59th Street	*649
		East Avenue Ditch Tributary	South edge of 57th Street approximately 550 feet east from its intersection with LaGrange Road.	*648
		67th Street Ditch	30 feet downstream from center of Brainard Avenue	*658
			25 feet upstream from center of Sunset Avenue	*674
Maps available at City Hall, 5550 East Avenue, Countryside, Illinois.				
Kentucky	Daviess County Unincorporated Areas [Docket No. FEMA 5701].	Ohio River	Confluence with Cowhide Slough 4	*386
			Confluence with Yellow Creek 69	*390
		Panther Creek	State Highway 1554 at Curdsville at centerline	*384
			State Highway 56 (Glenn Bridge) at centerline	*385
			Hayden Bridge Road at centerline	*385
			State Highway 81 (Calhoun Bridge) at centerline	*390
		North Fork Panther Creek	U.S. Highway 231—50 feet upstream from centerline	*391
			Old Leitchfield Road 50 feet upstream from centerline	*402
			State Highway 54—150 feet upstream from centerline	*409
			Shorts Station Road at centerline	*412
		Pup Creek	State Highway 405—100 feet upstream from centerline	*391
			Confluence with Roberts Ditch 75	*399
		Persimmon Ditch	Confluence with Tributary of Persimmon Ditch	*402
		Ohio River Tributary	Owensboro Corporate limits, most upstream crossing 200 feet upstream.	*398
		Devins Ditch	State Highway 212—30 feet upstream from centerline	*397
		Carter Ditch	State Highway 212 at centerline	*398
		Scherm Ditch	State Highway 212 at centerline	*398
		Tamarack Ditch	Arlington Drive at centerline	*397
		Goetz Ditch	Todd Bridge Road 30 feet upstream from centerline	*393
			Sheet Flow Area 400 feet north or crossing of State Route 212	#2
		Harsh Ditch	Veach Road, first crossing at centerline	*394
		West Tributary of Harsh Ditch	Louisville and Nashville Railroad at centerline	*394
		Horse Fork	State Highway 212, most downstream crossing 50 feet upstream from centerline.	*394
			Old Hartford Road 50 feet upstream from centerline	*400
Maps are available at Daviess County Courthouse, Daviess County, Owensboro, Kentucky.				
Louisiana	Village of Gilbert, Franklin Parish [FEMA-5738].	Deer Creek	Approximately 400 feet upstream of Louisiana HWY 572	*69
			Just upstream of downstream of corporate limits	*66
Maps available at City Clerk's Office, City Hall, Gilbert, Louisiana 71295.				
Louisiana	Town of Homer, Clairborne Parish [FEMA-5748].	Caney Creek	Approximately 280 feet upstream of Lyons Hill Road	*230
			Approximately 70 feet upstream of U.S. HWY 79	*250
Maps available at City Hall, East Main Street, Homer, Louisiana 71040.				
Louisiana	Town of Rayville, Richland Parish [FEMA-5748].	Little Creek	Approximately 400 feet upstream of the downstream corporate limits	*79
			Just upstream of West Rosa Street	*80
		Little Creek, Tributary	Just downstream of West Francis Street	*79
		Stream No. 2	Approximately 500 feet downstream of State HWY 3048	*79
		Burns Bayou	Approximately 340 feet upstream of U.S. HWY 80	*79
		Burns Bayou, Tributary No. 2	Approximately 200 feet upstream of Linda Street	*78
Maps available at City Hall, P.O. Box 750, Rayville, Louisiana 71269.				

Final Base (100-year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Louisiana	Village of Tallulah, Madison Parish [FEMA-5738].	Panola Bayou	Just upstream of Fish Street, extended	* 79
	Maps available at City Clerk's Office, 204 North Cedar, Tallulah, Louisiana 71282.			
Maine	(T) Monmouth Kennebec County [Docket No. FEMA-5702].	Cobbosseecontee Lake	Shoreline	* 170
		Annabessacook Lake	Shoreline	* 173
		Cochnewagon Lake	Shoreline	* 272
		Wilson Pond	Shoreline	* 245
		Sand Pond	Shoreline	* 178
		Woodbury Pond	Shoreline	* 178
	Maps available at Town Office, Monmouth, Maine 04259.			
Maryland	Pocomoke City, Worcester County [Docket No. FEMA-5738].	Pocomoke River	Entire Shoreline	* 6
	Maps available at the City Hall, Pocomoke City, Maryland.			
Michigan	(C) Clio, Genesee County [Docket No. FEMA-5702].	Pine Run	At western corporate limits	* 687
			Just upstream of Chessie System Railroad bridge	* 691
			Just downstream of Center Street	* 692
			Just upstream of Center Street	* 695
			Just upstream of Clio Road	* 696
			Just upstream of Vienna Road	* 696
			Confluence of Mason Drain	* 698
			Approximately 730 feet upstream from the confluence of Mason Drain	* 699
			At eastern corporate limits	* 702
		Mason Drain	At confluence of Pine Run	* 698
			Approximately 1000 feet upstream from confluence of Pine Run	* 699
			Approximately 500 feet downstream from southern corporate limits	* 701
			At southern corporate limits	* 704
	Maps available at City Hall, 200 Griffes Street, Clio, Michigan 48420.			
Minnesota	(C) Medina, Hennepin County [Docket No. FEMA-5702].	Elm Creek	Approximately 105 feet downstream from Highway 55	* 959
			Just upstream from Highway 55	* 959
			Just downstream from State Highway 101	* 962
			Just upstream from State Highway 101	* 964
			Just downstream from Access Road (First Crossing)	* 966
			Just upstream from Access Road (Second Crossing)	* 973
			Just downstream from Soo Line Railroad	* 973
			Just upstream from Soo Line Railroad	* 975
			Approximately 300 feet upstream from Elm Creek Drive	* 977
			Just downstream from upstream crossing of Soo Line Railroad	* 978
		Lake Independence	Shoreline within Medina	* 960
			At mouth	* 961
		Unnamed Tributary	Approximately 250 feet upstream of Lake Shore Avenue	* 961
			Just downstream of Ardmore Street	* 961
		Lake Ardmore	Shoreline within Medina	* 962
	Maps available at City Hall, 2052 County Road 24, Hamel, Minnesota 55340.			
Minnesota	Zumbrota (City), Goodhue County [Docket No. FEMA-5748].	North Fork, Zumbro River	60 feet upstream from center of State Highway 58 (Main Street)	*972
		Bitter Creek	West Avenue 100 feet south from its intersection with 2nd Street	*976
			40 feet upstream from center of 5th Street	*985
			50 feet upstream from center of County Road 10	*1014
		Roscoe Creek	At center of Chicago, Milwaukee, St. Paul, and Pacific Railroad crossing.	*977
	Maps available at City Hall, 55 East 3rd Street, Zumbrota, Minnesota.			
Mississippi	Washington County, Unincorporated Areas [Docket No. FI-4254].	Mississippi River	Intersection of river and Southern Washington County Line	*128
			50 feet upstream from center of U.S. Highway 82	*137
			Intersection of river and Northern Washington County Line	*146
		Main Canal	Mouth of canal at Swan Lake	*108
			50 feet upstream from center of State Highway 438	*114
			50 feet upstream from center of Cedar Lane Farms Road	*118
			50 feet upstream from center of Columbus and Greenville Railroad	*122
			50 feet upstream from center of Metcalfe Road	*126
		Black Bayou	Mouth of Bayou at Swan Lake	*108
			50 feet upstream from center of State Highway 12	*109
			50 feet upstream from center of State Highway 438	*111
			50 feet upstream from center of Wilcox Road	*115
			0.5 miles upstream from center of U.S. Highway 82	*120
			50 feet upstream from center of Old Leland Road (also known as Red Bridge Bayou in this area).	*122
		Ditch No. 6	Intersection of ditch and center of Tate Road	*117
			50 feetupstream from center of Wilcox Road	*119
			50 feet upstream from center of South Main Street	*122
		Bowman Boulevard Ditch	50 feet upstream from center of Anne Stokes Road	*123
	Maps available at Washington County Courthouse, Greenville, Mississippi.			
Nebraska	(C) Fairbury, Jefferson County [Docket No. FEMA-5702].	Little Blue River	About 1.2 miles downstream from confluence of Brawner Creek	*1,292
			Just downstream of State Highway 15	*1,301
			Just upstream of Chicago, Rock Island and Pacific Railroad	*1,306
			Just upstream of Fredrick Street	*1,312
			About 1,500 feet upstream of U.S. Highway 136	*1,323

Final Base (100-year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			About 1.2 miles upstream of abandoned Rock Island and Pacific Railroad, at upstream limit of study.	*1,330
		Brawner Creek	At confluence with Little Blue River	*1,299
			About 850 feet downstream of Union Pacific Railroad	*1,300
			Just upstream of Fairgrounds Road	*1,326
			Just downstream of Chicago, Rock Island, and Pacific Railroad	*1,350
			Just upstream of U.S. Highway 136	*1,363
			About 0.60 mile upstream of U.S. Highway 136	*1,367
			Just downstream of County Road	*1,387
			Just upstream of County Road	*1,393
			Just downstream of Soil Conservation Service Dam	*1,400
			Just upstream of Soil Conservation Service Dam	*1,415
			0.68 mile above Soil Conservation Service Dam	*1,416
			Just downstream of County Road (0.82 mile above dam)	*1,419
			Just upstream of County Road (0.88 mile above dam)	*1,427
			At northern extraterritorial limit	*1,443
	Maps available at City Hall, 612 D Street, Fairbury, Nebraska 68352.			
Nebraska	(V) South Bend, Cass County [Docket No. FEMA-5702].	Platte River	1,600 feet upstream of Chicago, Rock Island, and Pacific Railroad	*1,039
			At corporate limits 4,100 feet upstream of Chicago, Rock Island, and Pacific Railroad.	*1,040
			6,500 feet upstream of Chicago, Rock Island, and Pacific Railroad	*1,043
	Maps available at Chairman's home, P.O. Box 222, South Bend, Nebraska 68058.			
New York	Town of Chemung, Cheumug County [Docket No. FEMA-5734].	Chemung River	Downstream Corporate Limits (200 feet downstream of State Route 17 crossing).	*778
			540 feet downstream from confluence of Dry Brook	*787
			Confluence of Wynkoop Creek	*791
			Upstream side of Wynkoop Creek Road crossing	*801
			Upstream side of Conrail crossing	*806
			Upstream side of State Route 17 (final upstream crossing)	*815
			Confluence of Baldwin Creek	*820
		Wynkoop Creek	Confluence with Chemung River	*791
			Upstream side of Conrail crossing	*804
			Upstream side of Old Route 17 crossing	*808
			Upstream side of County Highway 50 crossing	*833
			1st downstream side crossing of Wynkoop Creek Road	*863
			Downstream side of the second downstream crossing of Wynkoop Creek Road.	*880
			Upstream side of Clark Road crossing	*920
		Baldwin Creek	Confluence with Chemung River	*820
			State Route 17 Bridges (upstream side)	*829
			Confluence of Hoffman Hollow	*832
			South of intersection of Lowman Road and Corporate Limits	*845
	Maps available at the Town Hall.			
New York	Village of Scottsville, Monroe County [Docket No. FEMA-5734]	Oatka Creek	Downstream Corporate Limits	*532
			Upstream Corporate Limits	*538
		Mill Race	Confluence with Oatka Creek	*538
			Private Drive Culvert (upstream)	*547
			Approximately 650 feet upstream of Caledonia Avenue	*552
	Maps available at the Village Hall.			
North Carolina	Town of Catawba, Catawba County [FEMA-5738].	Lyle Creek	Just upstream of N.C. 10	*774
		Town Creek	Just upstream of S.R. 1004	*818
			Just upstream of S.R. 1822.	*841
	Maps available at Mayor's Office, Catawba City Hall, Catawba, North Carolina 28609.			
North Carolina	Unincorporated Areas of Catawba County [FEMA-5738].	Lyle Creek	Just upstream of N.C. 10	*775
			Just downstream of I 64, I 70	*788
			Just downstream of SR 1709	*829
			Approximately 1,100 feet downstream of 1441	*936
		McLin Creek	Just downstream of SR 1722	*778
			Just upstream of SR 1731	*868
			Just upstream of SR 1746	*919
		West Tributary, McLin Creek	Approximately 3,400 feet downstream of SR 1736	*915
		Hagan Fork Creek	Just upstream of SR 1727	*813
			Just upstream of N.C. 10	*821
			Just upstream of SR 1806	*861
		Mull Creek	Just upstream of I 40	*860
		Bakers Creek	Just upstream of N.C. 16	*870
			Just upstream of SR 1512	*889
		Conover Creek	Just upstream of SR 1712	*876
		Cline Creek	Just downstream of SR 1164	*870
			Just upstream of U.S. Highway 321, 64, 70	*883
			Just upstream of SR 1488	*900
		Cline Creek, North	Just downstream of SR 1486	*893
		Propst Creek	Approximately 750 feet upstream of SR 1683	*920
			Approximately 200 feet downstream of SR 1492	*1,006
		Herman Branch Creek	Just upstream of SR 1544	*918
			Just downstream of SR 1621	*978
		Clark Creek	Approximately 450 feet upstream of SR 2012	*812
			Approximately 500 feet downstream of SR 201	*824

Final Base (100-year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Just upstream of SR 1165	*861
		Miller Branch Creek	Approximately 150 feet downstream of SR 1478	*894
		Smyre Creek	Approximately 125 feet downstream of SR 1880	*847
		South Fork Catawba River	Just upstream of N.C. 10	*820
		Henry Fork	Just upstream of SR 1144	*833
			Just upstream of SR 1124	*918
		Snow Creek	Just upstream of SR 1507	*974
		Long Shoal Creek	Just upstream of SR 1529	*940
			Just downstream of SR 1511	*984
		Elk Shoal Creek	Just upstream of SR 1703	*877
			Just upstream of SR 1702	*926
		Dellinger Creek	Just upstream of SR 1702	*961
		Long Creek	Approximately 1,900 feet upstream of the Confluence with McLin Creek.	*869
			Just downstream of the Southern Railway	*945
		Town Branch	Approximately 2,100 feet downstream from SR 1004	*799
		Bills Creek	Just upstream of U.S. Highway 321	*835
		Betts Branch	Just downstream of SR 2012	*812
		Pinch Gut Creek	Approximately 150 feet downstream of SR 1882	*830
			Just downstream of SR 1880	*851
		Maiden Creek	Approximately 200 feet downstream of SR 1867	*880
		Allen Creek	Approximately 200 feet downstream of SR 1867	*880
		Naked Creek	Just upstream of SR 1453	*960
Map available at Planning Office, County Administration Building, Newton, North Carolina 28658.				
North Carolina	City of Conover, Catawba County [FEMA-5738].	Lyle Creek	Just upstream of S.R. 1484 Bridge	*894
			Just upstream of S.R. 1490 Bridge	*905
		Propst Creek	Approximately 25 feet downstream of S.R. 1583 Bridge	*915
		Conover Creek	Approximately 130 feet upstream of I-40 Bridge	*927
			Approximately 100 feet upstream of 7th Street Bridge	*934
			Approximately 75 feet downstream of 5th Street Bridge	*948
		Mull Creek	Approximately 100 feet upstream of SP 1714	*929
Maps available at Conover City Office, 101 First Street West, Conover, North Carolina 28613.				
North Carolina	Long View (Town), Catawba County [Docket No. FI-5275].	Long View Creek	25 feet upstream from centerline of 1st corporate limits	*1,012
			775 feet downstream from centerline of confluence with Long View Creek Tributary Number Two.	*1,030
			60 feet downstream from centerline of U.S. Highways 64 and 70	*1,050
			25 feet upstream from centerline of U.S. Highways 64 and 70	*1,080
			25 feet upstream from centerline of 26th Street S.W.	*1,080
		Frye Creek	40 feet upstream from centerline of 2nd Avenue N.W	*1,052
			150 feet upstream from centerline of 19th Street N.W.	*1,059
			25 feet upstream from centerline of 20th Street N.W.	*1,062
			120 feet downstream from centerline of 23rd Street N.W	*1,065
			20 feet upstream from centerline of 23rd Street N.W.	*1,070
			60 feet upstream from centerline of 27th Street N.W.	*1,085
			20 feet upstream from centerline of 30th Street Place N.W	*1,105
			20 feet upstream from centerline of 33rd Street N.W.	*1,120
		Long View Creek Tributary Two	840 feet upstream from the confluence with Long View Creek	*1,050
Maps available at Town Hall, 139 24th Street, S.W., Hickory, North Carolina.				
North Carolina	Town of Maiden, Catawba County [FEMA-5738].	Maiden Creek	Just upstream of State Road 2007	*805
			Approximately 450 feet upstream of US 321	*812
			Just upstream of State Road 1810	*830
		Allen Creek	Just upstream of State Road 1870 (Extended)	*840
		Clarks Creek	Just upstream of State Road 2007	*804
		Holly Branch	Just upstream of State Road 2005	*818
		Pinch Gut Creek	Approximately 100 feet downstream of Northwestern Railroad	*809
			Approximately 400 feet upstream of US 321	*810
Maps available at Town Manager's Office, Town Hall, 113 W. Main Street, Maiden, North Carolina 28650.				
North Carolina	City of Newton, Catawba County [FEMA-5738].	Clarks Creek	Approximately 250 feet upstream of the Confluence of Smyre Creek	*829
			Just upstream West C Street (NC HWY 10)	*839
			Approximately 270 feet downstream HWY 1149	*849
		Hildebran Creek	Approximately 200 feet upstream of HWY 10	*838
			Approximately 75 feet upstream of SR 1154	*851
			Approximately 100 feet downstream of West 1st Street	*867
			Just upstream of SR 1156	*913
		Smyre Creek	Downstream of HWY 321	*833
			Approximately 140 feet downstream of HWY 1880	*847
		Town Creek	Approximately 30 feet upstream of P Street	*836
			Approximately 200 feet upstream of South Caldwell Avenue	*869
			Just upstream SR 1880	*869
		Snow Hill Branch	Just upstream of HWY 16	*875
			Approximately 50 feet upstream of SR 1736	*901
			At East 11th Street	*936
		McLin Creek	Approximately 170 feet upstream SR 1739	*940
			Approximately 30 feet upstream of Confluence of East Tributary McLin Creek.	*944
Maps available at City Hall, P.O. Box 550, Newton, North Carolina 28658.				
Ohio	(V) Corwin, Warren County [Docket No. FEMA-5702].	Little Miami River Mill Run Channel.	About 960 feet downstream of Corwin Road	*724
			About 1,810 feet upstream of Corwin Road	*724
Maps available at the Village Hall, Corwin, Ohio 75068.				

Final Base (100-year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Oregon	Lincoln (County), Unincorporated Areas [Docket No. FEMA-5701].	Pacific Ocean Near Yachats	Area 1,800 feet North from the City of Yachats Northern corporate limits.	*32
			Area 1,800 to 4,600 feet North of City of Yachats corporate limits; West of U.S. Highway 101.	*26
			Area 4,600 to 8,600 feet North of City of Yachats corporate limits; West of U.S. Highway 101.	*20
			Area 8,600 to 10,600 feet North of City of Yachats corporate limits; West of U.S. Highway 101.	*24
			Area 10,600 to 16,300 feet North of City of Yachats corporate limits; West of U.S. Highway 101.	*28
			Area 16,700 to 21,500 feet North of City of Yachats corporate limits; West of U.S. Highway 101.	*20
			Area 21,500 to 22,100 feet North of City of Yachats corporate limits; West of U.S. Highway 101.	*26
			Area 22,100 to 24,100 feet North of City of Yachats corporate limits; West of U.S. Highway 101.	*23
			Area from the Northern City of Yachats corporate limits north for 1,000 feet.	#1
			Area from 1,600 feet North of City of Yachats corporate limits, along and West of U.S. Highway 101; North to Blodgett Road.	#1
			Area from 1,000 feet North of the intersection of Blodgett Road and U.S. Highway 101 along and West of U.S. Highway 101 to 350 feet North of the intersection of U.S. Highway 101 and Dick's Fork Road.	#1
			Area from 800 feet North of the intersection of U.S. Highway 101 and Dick's Fork Road along U.S. Highway 101 to 1,150 feet North of the intersection of U.S. Highway 101 and Center Street.	*1
		Pacific Ocean at Wakonda Beach	Area 1,000 to 1,600 feet North of Center Street; West of U.S. Highway 101.	*28
			Area 1,600 to 2,100 feet North of Center Street; West of U.S. Highway 101.	*21
			Area 2,100 to 2,800 feet North of Center Street; West of U.S. Highway 101.	*23
			Area 2,800 to 5,450 feet North of Center Street; West of U.S. Highway 101.	*30
			Area 5,450 to 9,500 feet North of Center Street; West of U.S. Highway 101.	*28
			Area 9,500 feet North of Center Street to 1,700 feet North of Seabrook Road; West of U.S. Highway 101.	*29
			Area 1,700 feet North of Seabrook Road to 2,500 feet North of East end of Seabrook Road; West of U.S. Highway 101.	*32
			Area 2,500 to 4,000 feet North of Seabrook Road; West of U.S. Highway 101.	*20
			Area 1,000 to 9,400 feet North of the intersection of U.S. Highway 101 and Center Street along and West of U.S. Highway 101.	#1
			Area 500 to 2,800 feet North of Seabrook Road; along and West of U.S. Highway 101.	#1
		Pacific Ocean at Waldport	Area along Southern edge of Pacific Way extending South and along Alsea Bay Drive and along Eastern City of Waldport corporate limits to a point 5,300 feet South of Pacific Way.	*11
			Area 2,300 to 3,800 feet South of the intersection of Pacific Way and Oceania Drive.	*25
			Area 2,300 feet South of intersection of Pacific Way and Oceania Drive, North to this intersection.	*28
			Area West of intersection of Pacific Way and Oceania Drive extending North for 400 feet.	*29
			Area 2,300 to 3,400 feet North of Pacific Way	*31
			Area 3,400 to 5,400 feet North of Pacific Way	*28
			Area 5,400 to 6,500 feet North of Pacific Way	*27
			Area 6,500 to 7,500 feet North of Pacific Way	*31
			Area 2,300 feet South of Pacific Way on Oceania Drive and extending West of Oceania Drive to an area 4,200 feet South of Pacific Way.	#1
			Small areas on Oceania Drive 1,800 and 600 feet South of Pacific Way.	#1
			Area on South edge of Pacific Way to 6,700 feet North of Pacific Way	#1
		Pacific Ocean at Holly Beach	Area 7,500 to 10,200 feet North of Pacific Way; West of U.S. Highway 101.	*29
			Area 10,200 to 15,800 feet North of Pacific Way; West of U.S. Highway 101.	*28
			Area 15,800 to 18,200 feet North of Pacific Way; West of Highway 101.	*29
			2 small areas 9,500 feet North of Pacific Way	#1
			Area 200 feet upstream of confluence of Fox Creek	#1
			Area 300 feet Northeast of confluence of Fox Creek	#1
			Small area 300 feet upstream of confluence of Collins Creek	#1
		Pacific Ocean at Holiday Beach	Area 300 to 3,000 feet North of intersection of U.S. Highway 101 and B Street; West of U.S. Highway 101.	*38
			Area 3,000 to 4,100 feet North of intersection of U.S. Highway 101 and B Street, West of U.S. Highway 101.	*30
			Area 4,100 to 6,250 feet North of intersection of U.S. Highway 101	*37
			Area 6,250 to 6,700 feet North of intersection of U.S. Highway 101 and B Street; West of U.S. Highway 101.	*30
			Area 6,700 to 9,200 feet North of intersection of U.S. Highway 101 and B Street; West of U.S. Highway 101.	*40
			Area 600 to 1,700 feet North of intersection of B Street and U.S. Highway 101 and West of U.S. Highway 101.	#1
			Area 2,800 feet North of intersection of U.S. Highway 101 and B Street on U.S. Highway 101.	#1
			Two small areas West of U.S. Highway 101 3,900 and 4,600 feet North of intersection of B Street and U.S. Highway 101.	#1

Final Base (100-year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Area on Moore Creek North of Thiel Creek Road West of U.S. Highway 101.	#1
		Pacific Ocean at South Beach	Area at confluence of Grant Creek	*31
			Area 100 to 1,900 feet North of Grant Creek confluence	*40
			Area 1,900 to 2,450 feet North of Grant Creek confluence	*31
			Area 2,450 to 3,900 feet North of Grant Creek confluence	*30
			Area 3,900 to 5,300 feet North of Grant Creek confluence	*19
			Area 5,300 to 6,500 feet North of Grant Creek confluence	*31
			Area on Grant Creek North of Marine View Drive; West of U.S. Highway 101.	#1
			Area 700 to 2,800 feet North of Henderson Creek and West of U.S. Highway 101.	#1
		Pacific Ocean at Newport	Area 3,400 to 3,800 feet South of City of Newport Northern corporate limits.	*34
		Pacific Ocean at Gleneden Beach	Area 550 to 2,250 feet South of Raymond Street and West of U.S. Highway 101.	*30
			Area 100 to 550 feet South of Raymond Street and West of U.S. Highway 101.	*26
			Area 4,000 feet North to 100 feet South of Raymond Street and West of U.S. Highway 101.	*29
			Area 4,000 to 6,100 feet North of Raymond Street and West of U.S. Highway 101.	*31
			Area 250 feet South of Raymond Street and West of U.S. Highway 101.	#1
			Areas 300, 850, 1,400, 2,000, and 3,200 feet North of Raymond Street.	#1
		Pacific Ocean at Siletz Spit	Area 6,100 to 6,300 feet North of Raymond Street and West of Salishan Drive.	*26
			Area 6,300 to 7,100 feet North of Raymond Street and West of Salishan Drive.	*30
			Area 7,100 to 7,900 feet North of Raymond Street and West of Salishan Drive.	*33
			Area 7,900 to 8,400 feet North of Raymond Street and West of Salishan Drive.	*30
			Area 8,400 to 9,900 feet North of Raymond Street and West of Salishan Drive.	*31
			Area 9,900 to 12,000 feet North of Raymond Street and West of Salishan Drive.	*30
			Area 12,000 to 14,100 feet North of Raymond Street and West of Salishan Drive.	*31
			Area 16,600 to 14,100 feet North of Raymond Street and West of Salishan Drive.	*29
			Area 19,700 to 16,600 feet North of Raymond Street West and South of Lincoln City corporate limits.	*30
			Areas 7,300 and 8,000 feet North of Raymond Street, West and on Salishan Drive.	#1
			Area along Salishan Drive	#1
		Pacific Ocean at Roads End	Area from Lincoln City corporate limits to 1,500 feet North of corporate limits.	*34
			Area 1,500 feet North of Lincoln City corporate limits to 2,400 feet North of corporate limits.	*36
			Area 2,400 feet North of Lincoln City corporate limits to 3,800 feet North of corporate limits.	*34
			Area 3,800 feet North of Lincoln City corporate limits to 7,400 feet North of corporate limits.	*38
			Area along Logan Road from 400 feet North of the intersection of 61st Street and Logan Road to 74th Street.	#1
		Devils Lake	At East Devils Lake Road crossing Devils Lake	*14
		Salmon River	Old Coast Highway Bridge at centerline	*19
			Fish Hatchery 250 feet upstream from centerline	*26
			Confluence with Willis Creek	*27
			750 feet upstream of confluence with Curl Creek	*35
			350 feet upstream of confluence with Panther Creek	*50
			100 feet upstream of confluence with Bear Creek	*80
			50 feet upstream of North Bank Road Bridge	*130
			50 feet upstream of Privage Bridge	*150
			75 feet upstream of Salmon River Highway Bridge	*182
			550 feet upstream of Hideaway Road Bridge	*205
			300 feet upstream of confluence with Alder Brook	*8
			260 feet upstream of confluence with Treat River	230
			Treat River Road Bridge at centerline	*233
			Van Duzer State Park at upstream limit of Detailed Study	*306
		Schooner Creek	Lincoln City Eastern corporate limits 3,060 feet above Mouth	*10
			First Private Bridge upstream from Mouth 430 feet upstream of centerline.	*20
			Siletz Bay—Schooner Creek Road Bridge 100 feet upstream of centerline.	*37
			Second Private Bridge upstream from Mouth 60 feet upstream of centerline.	*59
			Third Private Bridge upstream from Mouth 120 feet upstream of centerline.	*84
			Fourth Private Bridge upstream from Mouth at centerline	*102
			Fourth Private Bridge upstream from Mouth 980 feet upstream of centerline.	*109
		Drift Creek	U.S. Highway 101 at centerline	*10
			250 feet upstream of Siletz Bay-Schooner Creek Road Bridge	*18
		Siletz River (Siletz Bay)	Area South of Lincoln City corporate limits, East of Salishan Drive	*10
			Area Southeast of Lincoln City corporate limits and West of U.S. Highway 101.	*12

Final Base (100-year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Area from 2,700 to 4,000 feet Northeast of the intersection of U.S. Highway 101 and Immonen Road, along U.S. Highway 101.	*11
			Area along Southeastern corner of Lincoln City corporate limits and U.S. Highway 101.	*11
		Siletz River	U.S. Highway 101 (Siletz River Bridge) 2,000 feet upstream of centerline.	*10
			500 feet upstream of confluence with Anderson Creek	*21
			700 feet upstream of confluence with Skunk Creek	*23
			19,800 feet upstream of confluence with Skunk Creek	*27
			900 feet upstream of confluence with Cedar Creek	*52
			250 feet upstream of confluence with Hough Creek	*55
			600 feet upstream of confluence with Tangerman Creek	*93
			200 feet upstream of City of Siletz most downstream corporate limits	*94
			Siletz Highway Bridge 3,400 feet upstream of centerline	*101
			400 feet upstream of confluence with Dewey Creek	*113
			Gaither Street Bridge 1,600 feet upstream of centerline	*122
			400 feet upstream of most upstream City of Siletz corporate limits	*124
			1,900 feet upstream of confluence with Baker Creek	*148
			Sam Creek Road; 1,100 feet upstream of centerline	*155
			400 feet upstream of confluence with Rock Creek	*178
			Orton Bridge 600 feet upstream of centerline	*185
			600 feet upstream of confluence with Mill Creek	*188
		Yaquina River	1,500 feet upstream of Coquille Point	*10
			2,000 feet upstream of confluence with Pooles Slough	*11
			Confluence with Nute Slough	*12
			2,000 feet upstream of City of Toledo most downstream corporate limits.	*13
			2,600 feet upstream of confluence with Elk Creek	*20
			Bear Creek Road Bridge; 700 feet upstream of centerline	*91
			At confluence with Little Creek	*93
			Southern Pacific Railroad Bridge; 500 feet upstream	*103
		Depot Creek (Backwater from Yaquina River) Olalla Creek.	Depot Creek Tidegate	
			Along Oregon State Highway 229	*13
				*13
			First Private Road upstream of intersection of Corvallis-Newport Highway and Toledo Frontage Road 575 feet upstream of centerline.	*15
			Second Private Road upstream of intersection of Corvallis-Newport Highway and Toledo Frontage Road at centerline.	*20
			Fourth Private Road upstream of intersection of Corvallis-Newport Highway and Toledo Frontage Road 75 feet upstream of centerline.	*26
			Sixth Private Road upstream of intersection of Corvallis-Newport Highway and Toledo Frontage Road at centerline.	*32
			Ninth Private Road upstream of intersection of Corvallis-Newport Highway and Toledo Frontage Road at centerline.	*48
			Tenth Private Road upstream of intersection of Corvallis-Newport Highway and Toledo Frontage Road 925 feet upstream of centerline.	*55
		West Olalla Creek	Corvallis-Newport Highway 200 feet upstream of centerline	*15
			First Private Road upstream from Mouth 1,500 feet upstream of centerline.	*19
			Second Private Road upstream from Mouth at centerline	*31
			Second Private Road upstream from Mouth 1,500 feet upstream of centerline.	*41
		Alsea River (Alsea Bay)	Area at Northern City of Waldport corporate limits and South of Bayview Road.	*10
			4,000 feet upstream of confluence with Little Darkey Creek	*11
			Alsea Highway Bridge (Route 34) at centerline	*13
			Confluence with Squaw Creek	*20
			Confluence with Barclay Creek	*36
			Private Bridge at centerline	*45
			Confluence with Scott Creek	*55
			Thissel Road Bridge; 400 feet upstream of centerline	*78
			Confluence with Grass Creek	*82
			200 feet upstream of Five Rivers Road Bridge	*105
			Confluence with Butler Creek	*129
			Confluence with Wolf Creek	*141
			Confluence with Minoti Creek	*143
			250 feet upstream of confluence with Cow Creek	*147
			Confluence with Fall Creek	*163
			5,800 feet upstream of confluence with Fall Creek	*170
		Yachats River	U.S. Highway Bridge 101 at centerline	*9
			300 feet upstream of confluence with Barkley Creek	*14
			500 feet upstream of confluence with Salmon Creek	*15
			5,000 feet upstream of confluence with Salmon Creek	*20
		Big Creek	80 feet upstream of the most downstream City of Newport corporate limits.	*24
			At most upstream City of Newport corporate limits	*26
Maps available at Lincoln County Courthouse, 225 West Olive Street, Newport, Oregon.				
Pennsylvania	Township of Allison, Clinton County [Docket No. FEMA-5734.	West Branch, Susquehanna River	Downstream Corporate Limits	*569
			Upstream Corporate Limits	*576
		Bald Eagle Creek	Upstream of Route 220 Bridge	*567
			Upstream Corporate Limits	*567
		Sugar Run	Downstream of State Route 120	*569
			Upstream of Township Route 398	*570
			Upstream Corporate Limits	*621

Final Base (100-year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Lusk Run	Downstream Corporate Limits	*653
			Downstream of Private Road	*695
			Upstream Corporate Limits	*718
Maps available at the residence of Mr. Francis Johnson, 420 Irwin Street, Lock Haven, Pennsylvania 17745.				
Pennsylvania	Township of Black Creek Luzerne County [Docket No. FEMA-5734].	Nescopeck Creek	300 feet downstream of Interstate Route 80	*627
			200 feet upstream of Legislative Route 40012	*645
		Black Creek	200 feet downstream of Legislative Route 40010	*793
			Confluence with Tributary to Black Creek	*807
			Park Street (Extended)	*819
			Church Street (Extended)	*839
			Township Route 322 (Extended)	*848
			6,800 feet upstream Legislative Route 40010	*876
			8,950 feet downstream of Mine Access Road	*965
			7,000 feet downstream of Mine Access Road	*990
			3,000 feet downstream of Mine Access Road	*1,040
			Mine Access Road (Upstream)	*1,087
			1,000 feet upstream of Mine Access Road	*1,099
		Tributary to Black Creek	Confluence with Black Creek	*807
			Park Street (Upstream)	*818
			Private Drive 1,100 feet upstrem of Part Street (Upstream)	*838
			Pine Street (Upstream)	*881
			Church Street (Upstream)	*890
			Abandoned Railroad (Upstream)	*924
			150 feet upstream of Abandoned Railroad	*935
Maps available at the Township Building, Rock Glen, Pennsylvania.				
Pennsylvania	Blawnox, Borough, Allegheny County [Docket No. FEMA-5738].	Allegheny River	Downstream Corporate Limits	*740
			Upstream Corporate Limits	*741
Maps available at the Borough Hall, Blawnox, Pennsylvania.				
Pennsylvania	Borough of Eldred, McKean County [Docket No. FEMA-5734].	Allegheny River	Downstream Corporate Limits	*1,445
			Confluence of Canfield Creek	*1,446
		Barden Brook	Confluence with Allegheny River	*1,445
			Bennett Street	*1,446
			Upstream Corporate	*1,453
		Canfield Creek	Downstream Corporate Limits	*1,446
			Upstream Corporate	*1,448
Maps available at the Borough Office, Eldred, Pennsylvania.				
Pennsylvania	Township of Eldred, McKean County [Docket No. FEMA-5734.	Allegheny River	Downstream Corporate Limits (State Boundary)	*1,439
			State Route 346	*1,445
			Confluence of Canfield Creek	*1,446
		McCrea Run	Confluence with Allegheny River	*1,440
			400 feet downstream of Bullis Mill Road	*1,451
			340 feet upstream of Bullis	*1,460
		Mix Creek	Confluence with Allegheny River	*1,443
			2,360 feet upstream of Legislative Route 42021	*1,458
		Indian Creek	Confluence with Allegheny River	*1,444
			6,200 feet above confluence	*1,453
		Knapp Creek	Confluence with Allegheny River	*1,445
			1,550 feet upstream of Township Route 395	*1,449
		Windfall Hollow	Confluence with Knapp Creek	*1,445
			Loop Road (Downstream)	*1,453
		Potato Creek	Confluence with Allegheny River	*1,448
			Corporate Limits	*1,448
Maps available at the residence of Mr. Ernest Cook, Eldred, Pennsylvania.				
Pennsylvania	Haycock, Township Bucks County [Docket No. FEMA-5738].	Tohickon Creek	Confluence of Kimples Creek	*469
			Union Road (Downstream)	*480
		Kimples Creek	Confluence with Tohickon Creek	*469
			Old Bethlehem Road (Downstream)	*478
			Roudenbush Road (Downstream)	*482
			Lake Towhoe (Downstream)	*484
		Haycock Creek	Church Road (Downstream)	*1,400
			Haycock Run Road	*436
Maps available at the Township Municipal Building, Haycock, Pennsylvania.				
Pennsylvania	Township of Lake, Luzerne County [Docket No. FEMA-5734].	Harveys Creek	Downstream Corporate Limits	*1,099
			Upstream of Bryant Pond Dam	*1,113
		Pikes Creek	Confluence of Paint Spring Run	*1,113
			1,800 feet upstream of confluence of Paint Spring Run	*1,116
			Downstream Corporate Limits	*1,127
			Upstream of State Route 29	*1,136
			Upstream of State Route 118	*1,159
			Upstream of Private Drive on Pikes Creek	*1,178
			Upstream of Legislative Route 40065	*1,221
		Fades Creek	Confluence w/Pikes Creek	*1,137
			Upstream of State Route 29	*1,143
			Upstream of Township Route 706	*1,176
			Upstream of Township Route 673	*1,218
			1,350 feet upstream of Township Route 673	*1,234

Final Base (100-year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Beaver Run	Upstream of Township Route 760	*1,095
			Upstream of Township Route 673	*1,114
			Upstream of the Private Drive .5 miles south of Legislative Route 40062 on State Route 29.	*1,143
			300 feet upstream of Private Drive off State Route 29 which is 400 feet north of Legislative Route 40063.	*1,197
	Maps available at the Township Building, Lake, Pennsylvania.			
Pennsylvania	Township of Lawrence, Tioga County [Docket No. FEMA-5734].	Tioga River	Mechanic Street, Township Route 46 (Upstream)	*992
			Williamson Road (Downstream)	*995
			Williamson Road (Upstream)	*1,000
			Conrail 1,500 feet upstream from Williamson Road (Upstream)	*1,002
			Township Route 328	*1,004
			Upstream Corporate Limits	*1,012
		Cowanesque River	Downstream Corporate Limits	*998
			5,150 feet upstream Corporate Limits	*1,003
		Harts Creek	Confluence with Tioga River	*1,002
			Abandoned Railroad bridge 170 feet upstream of Williamson Road (Upstream).	*1,004
			Pit-access Road (Upstream)	*1,060
			Private Drive 10,740 feet upstream of mouth (Upstream)	*1,126
			11,680 feet upstream of mouth	*1,144
		Smith Creek	Confluence with Hartz Creek	*1,002
			Williamson Road, U.S. Route 15 (Upstream)	*1,003
			3,280 feet upstream of mouth	*1,066
	Maps available at the Township Building, Lawrence, Pennsylvania.			
Pennsylvania	Lykens, Borough Dauphin County [Docket No. FEMA-5738].	Rattling Creek	Downstream Corporate Limits	*642
			Edwards Street	*671
			Market Street	*707
			Dam	*729
			Glen Park Road	*761
			Upstream Corporate Limits	*768
		Wiconisco Creek	Main Street	*649
			Market Street	*679
			Upstream Corporate Limits	*683
	Maps available at the Borough Building, Lykens, Pennsylvania.			
Pennsylvania	Morris, Township Tioga County [Docket No. FEMA-5724].	Pine Creek	Downstream Corporate Limits	850
			Conrail (Upstream)	*860
			Approximately, 3,700 feet upstream of State Route 414	*871
		Babb Creek	Confluence with Pine Creek	*860
			State Route 414 (Upstream)	*867
			Confluence of Harrison Run	*1,016
			State Route 287 (Approximately 120 feet Downstream)	*1,033
			State Route 287 (Upstream)	*1,039
			Approximately 1,250 feet upstream of Conrail Crossing	*1,050
		Wilson Creek	Confluence with Babb Creek	*1,023
			State Route 287 (Upstream)	*1,049
			Confluence of Rattler Run	*1,100
		Long Run	Confluence with Babb Creek	*1,043
			Footbridge (Upstream)	*1,055
			Approximately 1,600 feet upstream of footbridge	*1,076
		Harrison Run	Confluence with Babb Creek	*1,016
			State Route 414	*1,026
			Township Route 496 (Upstream)	*1,062
			Approximately 1,500 feet upstream of Township Route 496	*1,113
	Maps available at Mrs. Broughton's residence, Morris, Pennsylvania.			
Pennsylvania	Township of Robeson, Berks County [Docket No. FEMA-5734]	Schuylkill River	Downstream Corporate Limits	*170
			Confluence of Indian Corn Creek	*172
			Gibralter Road crossing upstream	*175
			Upstream Corporate Limits	*178
		Allegheny Creek	Confluence w/Schuylkill River	*176
			1st downstream Conrail crossing	*181
			Upstream State Route 568 crossing (Green Hill Road)	*242
			Seton Road crossing upstream	*308
		Hay Creek	Private Road Bridge downstream	*317
			Upstream Rock Hollow Road crossing	*331
			Confluence of Beaver Run	*350
			Upstream Corporate	*339
		Seidel Creek	Confluence w/Schuylkill River	*174
			Old River Road crossing	*182
		Cold Run	Downstream Corporate limits	*358
	Maps available at the Township School and the Township Police Station, Robeson, Pennsylvania.			
Texas	City of Balch Springs, Dallas County [FEMA-5738].	Hickory Creek	At Arrowdell Road	*441
			At Seagoville Road	*452
			Just upstream of Eleanor Lane	*459
			Approximately 100 feet downstream of Stein Road	*482
		Stream 4 C6	At Verdant Road	*444
			Just upstream of Seagoville Road	*462

Final Base (100-year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		South Mesquite Creek	Approximately 150 feet upstream of Beltline Road	*427
		Stream 2 B2	Just upstream of Burton Road	*432
	Maps available at City Administrator's Office, 3117 Hickory Road, Balch Springs, Texas 75159.			
Texas	City of Elmendorf, Bexar County [FEMA-5713].	Ponding Area (Northwest of Southern Pacific Railroad.	Intersection of First Avenue and Fourth Street	*503
			Intersection of Fifth Street and First Avenue	*503
		Shallow Flooding Area 1	Intersection of Second Street and Fifth Avenue	#2
			Intersection of Fourth Avenue and Second Street	#2
		Shallow Flooding Area 2	Intersection of Briar Road and Old Corpus Christi Highway	#2
		Shallow Flooding Area 3	Intersection of Fourth Avenue and Seventh Street	#3
	Maps available at the City Clerk's Office, City Hall, 16919 North Third Avenue, Elmendorf, Texas 78112.			
Texas	City of Kemp, Kaufman County [FI-5678].	Kings Creek Tributary	Upstream of Elm Str. (US 175)	*359
			Upstream of Old Highway 40	*354
			Upstream of Tolosa Road	*345
	Maps available at City Hall, 11th and Main Street, Kemp, Texas 75143.			
Texas	Town of Shavano Park, Bexar County [FI-5662].	East Fork, Olmos Creek	Approximately 280 feet downstream of DeZovala Road	*925
			Hunter Branch Road (extended)	*943
		Turkey Creek, Tributary	Just downstream of Broken Bough Street	*948
			Just downstream of Turkey Creek Street	*954
			Just downstream of Harry Wurzbach Highway	*974
		Mossey Cup, Tributary	Just downstream of Channel Dam	*981
		Gage Tributary	Just downstream of Harry Wurzbach Highway	*912
			Just upstream of Harry Wurzbach Highway	*919
			Just downstream of Bent Oak Street	*942
		Salado Creek	Southeastern Corporate Limits (extended)	*902
	Maps available at the Town Clerk's Office, Town Hall, 99 Saddletree Road, Shavano Park, Texas 78231.			
Vermont	Charlotte, Town, Chittenden County [Docket No. FEMA-5738].	Lake Champlain	Entire Coastline	*102
	Maps available at the Town Clerk's Office, Charlotte, Vermont.			
Vermont	Village of Richford, Franklin County, [Docket No. FEMA-5723].	Missisquoi River	Downstream Corporate Limits	*432
			Downstream confluence of Diversion Ditch	*432
			Confluence of North Branch	*435
			Island Access Road	*438
			Upstream inlet to Diversion Ditch	*440
			Main Street	*447
			Upstream Corporate Limits	*450
		Diversion Ditch	Downstream confluence with Missisquoi River	*432
			Granite Block Weir	*440
		North Branch	Downstream confluence with Missisquoi River	*435
			River Street	*436
			Upstream limit of flooding affecting community	*436
	Maps available at the Office of the Village Clerk, Richford, Vermont.			
West Virginia	Anmoore, Town, Harrison County [Docket No. FEMA-5738].			
	Ann Moore Run		Downstream Corporate Limits	*1,006
			Confluence with Smithfield Run	*1,015
			Private Bridge Upstream	*1,039
			Parkway Street Upstream	*1,058
			Upstream Corporate Limits	*1,068
		Smithfield Run	Pike Street	*1,016
			Interstate 79 Overpass Upsteam	*1,026
			Smithfield Avenue Upstream	*1,035
			Upstream Corporate Limits	*1,043
		Tributary A	Confluence with Smithfield Run	*1,017
			1,000 feet upstream from Ash Street	*1,022
	Maps available at the Town Hall. Anmoore, West Virginia.			

(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 delegation of authority to Federal Insurance Administrator 44 FR 20963)

Issued: March 6, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-9949 Filed 4-2-80; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 34, 76, 95, 162, 167 and 193

[CGD 76-086a]

Fire Station Hydrants, Hose, and Nozzles; Extension of Compliance

AGENCY: Coast Guard, DOT.

ACTION: Supplemental Final Rule.

SUMMARY: This supplemental final rule modifies the rules published in the **Federal Register** of January 11, 1979 by extending the compliance date for all affected vessels to February 12, 1981. Those rules, which require the affected vessels, with certain exceptions, to have approved combination solid stream and water spray firehose nozzles at all hydrants, were intended to allow the owners and operators of those vessels two years to replace their currently installed straight or "smoothbore" firehose nozzles with approved combination nozzles. The Coast Guard determined that this extended time period is necessary due to the limited supply of Coast Guard approved nozzles available. Compliance date: The Fire Station Hydrant, Hose, and Nozzle regulations (Coast Guard Docket No. CGD 76-086) published in the **Federal Register** of January 11, 1979 (44 FR 2390) must be met on February 12, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. William Boyce, Office of Merchant Marine Safety (G-MMT/13), Room 1300, U.S. Coast Guard Headquarters, 2100 Second St., S.W., Washington, D.C. 20593, (202) 426-2205.

SUPPLEMENTARY INFORMATION: The rules concerning fire station hydrants, hose and nozzles (Coast Guard Docket No. 76-086) published in the **Federal Register** of January 11, 1979 (44 FR 2390) amended the firefighting and fire protection equipment regulations of 46 CFR Chapter I. The amended rules require that, except in special limited cases, only Coast Guard approved combination solid stream and water spray firehose nozzles and low velocity water spray applicators that meet the equipment specification of 46 CFR 162.027 may be on Coast Guard certificated vessels except small passenger vessels. The rules have the effect of prohibiting straight or "smoothbore" fire hose nozzles as installed equipment on all affected vessels, both new and existing. In addition, they require that existing combination nozzles approved under a previous equipment specification be replaced, when no longer serviceable, with nozzles meeting the equipment specification currently in effect.

Recognizing that an overall conversion from "smoothbore" to combination nozzles might exhaust the stocks of approved combination nozzles available from suppliers of such equipment, the Coast Guard intended to allow all affected vessels in existence on the effective date of the regulations two years to comply. As the rules were published, however, the extended compliance date applied only to so-called "grandfathered" vessels, i.e., those with installations contracted for before May 26, 1965 (March 1, 1968, for Oceanographic Vessels).

This supplemental rule making extends the compliance date for all vessels affected by the January 11, 1979 amendments to February 12, 1981. The fire hose nozzle and water spray applicator requirements in the following regulations of 46 CFR Chapter I, in effect before February 12, 1979 apply until February 11, 1981:

For Tank vessels—§ 34.10-10 (e), (n), and (o) and § 34.10-90(a)(7).

For Passenger Vessels—§ 76.10-10 (g) and (j) and § 76.10-90(a)(1).

For Cargo and Miscellaneous Vessels—§ 95.10-10 (g) and (i) and § 95.10-90(a)(1).

For Nautical School Ships—§ 167.45-5(c)(1) and § 167.45-40(c).

For Oceanographic Vessels—§ 193.10-10 (d) and (i) and § 193.10-90(a)(2).

(46 U.S.C. 390b, 481, and 391a; 49 U.S.C. 1655(b)(1); and 49 CFR 1.46(b) and (n)(2))

Dated: March 26, 1980.

Henry H. Bell,

Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 80-9772 Filed 4-2-80; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF COMMERCE

Maritime Administration

46 CFR Part 308

War Risk Insurance

AGENCY: Maritime Administration, Department of Commerce.
ACTION: Final rule.

SUMMARY: The authority of the Secretary of Commerce (Secretary) to provide insurance and reinsurance under Title XII, Merchant Marine Act, 1936, (Act), as amended (46 U.S.C. 1281–1293), expired on September 30, 1979. It was reinstated by Pub. L. 96–195 enacted into law on February 25, 1980, and will expire on September 30, 1984. The purpose of these amendments to 46 CFR Part 308 is to provide the terms and conditions upon which war risk insurance interim binders for United States-flag vessels will be reinstated; to change the expiration date of the binder forms; to announce the availability of war risk insurance interim binders for United States-flag vessels, as well as for foreign-flag vessels owned or controlled by United States citizens; and to make editorial changes related to official titles, addresses and references to certain forms used by commercial insurers.

EFFECTIVE DATE: April 3, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. K. H. Green, Director, Office of Marine Insurance, Maritime Administration, Washington, D.C. 20230. Telephone: 202–377–4820

SUPPLEMENTARY INFORMATION: The authority of the Secretary to provide war risk insurance and reinsurance under Title XII of the Act was last reinstated in 1976 by Pub. L. 94–523. Regulations under 46 CFR Part 308 were subsequently amended in two steps to effectuate this authority. By notice of final rulemaking in the **Federal Register** of March 8, 1977 (42 FR 13023), the Maritime Administration published various amendments with respect to war risk coverage for United States-flag vessels. Amendments were also made to implement the statutory expansion of coverage to include certain containers. A notice of proposed rulemaking was published on June 2, 1978 (43 FR 24075), for the purpose of amending the regulations to clarify the eligibility of United States-flag vessels for war risk insurance coverage and to establish the eligibility for certain foreign-flag vessels, consistent with the criteria in section 1203(a) of the Act (46 U.S.C. 1283(a)). Extensive comments were submitted, principally with respect to the eligibility of foreign-flag vessels owned or controlled by United States citizens. After careful agency review of all comments, final regulations were published on November 20, 1978, (43 FR 54090). The amendments to 46 CFR Part 308 now being made are principally of a procedural and technical nature. They include an application procedure for interim binders on foreign-flag vessels owned or controlled by United States citizens. A determination has been made that these amendments are not significant within the meaning of EO 12044 and implementing procedures of the Department of Commerce and Maritime Administration. These amendments will not result in any major economic consequences that would require the preparation of a regulatory analysis.

Accordingly, 46 CFR Part 308 is amended as follows:

1. Section 308.6 is revised to read as follows:

§ 308.6 Period of interim binders and renewal procedures.

(a) All interim binders on United States-flag vessels under § 308.1(a) issued in accordance with Subparts B, C, and D of this part and which expired at midnight, September 30, 1979, are reinstated from April 3, 1980 until midnight, September 30, 1984: *Provided,* That on or before June 2, 1980 the assureds under interim binders on United States-flag vessels comply with the requirements as set forth in paragraph (b) of this section. Failure to comply with such requirements within the prescribed time will result in automatic termination of the binders.

(b) Assureds under interim binders on United States-flag vessels reinstated under paragraph (a) of this section shall file a statement, in triplicate, on the letterhead of the assured, setting forth the former binder numbers, the vessel name and official number (unless the vessel is undocumented), and a list of all documents previously submitted, with a certification as to their completeness and accuracy as of the date of filing for reinstatement. If any previously submitted documents are no longer complete and accurate, as required, assureds shall submit corrected documents. Any required documents not previously submitted shall be attached to the certification and accompany the binder fees, as prescribed in §§ 308.12, 308.202 and/or 308.302. Checks should be made payable to "Maritime Adm.—Commerce" and be sent with the other required documents to the American War Risk Agency, 14 Wall Street, New York, New York 10005, within the prescribed 60-day period.

(c) New applications for interim binders on United States-flag vessels, with necessary attachments (as specified in § 308.3), as well as checks for the binder fees prescribed, shall be filed with the American War Risk Agency at the address shown in paragraph (b) of this section. All interim binders on United States-flag vessels shall become effective as of the date of determination of eligibility by the Maritime Administration (as required).

(d) Applications for interim binders on United States citizen-owned or controlled foreign-flag vessels, together with necessary attachments (as specified in § 308.3) and checks for binder fees prescribed, shall be filed with the Maritime Administration, Attention: Director, Office of Marine Insurance, Washington, D.C. 20230. All interim binders for foreign-flag vessels will become effective on the date the owner's contract of commitment is executed by the Maritime Administration.

§§ 308.7, 308.101, 308.106, 308.107, 308.201, 308.206, 308.207, 308.301 and 308.305 [Amended]

2. Sections 308.7; 308.101; 308.106; 308.107; 308.201; 308.206; 308.207; 308.301, and 308.305 are amended by revising each reference to "American Institute Hull War Risks and Strikes Clauses" to read: "American Institute Hull War Risks and Strikes Clauses (Including Automatic Termination and Cancellation Provisions) for Attachment to American Institute Hull Clauses, December 1, 1977".

§§ 308.106, 308.206 and 308.305 [Amended]

3. Sections 308.106; 308.206, and 308.305 are amended by changing the expiration date of the interim binders to "September 30, 1984".

§ 308.509 [Amended]

4. Section 308.509(b) is amended by changing the second sentence in that paragraph to read as follows:

* * * * *

(b) * * * "Upon receipt of the deposit, the underwriting agent shall assign a serial number to it and transmit it to the Maritime Administration, Attention: Director, Office of Financial Management, Washington, D.C. 20230."

§ 308.510 [Amended]

5. Section 308.510(b) is amended by changing the third sentence of that paragraph to read as follows:

* * * * *

(b) * * * "Upon receipt of the surety bond, the underwriting agent shall assign a serial number to it and transmit it to the Maritime Administration, Attention: Director, Office of Financial Management, Washington, D.C. 20230."

§ 308.522 [Amended]

6. Section 308.522 is amended by changing the receipt section at the bottom of the form of transmittal letter to read as follows:

"Received on ———— (date), and collateral sent by registered mail to the Maritime Administration, Attention: Director, Office of Financial Management, Washington, D.C. 20230".

§ 308.528 [Amended]

7. Section 308.528 is amended by changing the Post Office Zip Code number in Section 2 of the fifth (5th) paragraph of the form of Surety Bond A to "20230".

§ 308.529 [Amended]

8. Section 308.529 is amended by changing the Post Office Zip Code number in Section 2 of the fifth (5th) paragraph of the form of Surety Bond B to "20230".

§ 308.549 [Amended]

9. Section 308.549 is amended by changing the addressee in the form of application letter for appointment of cargo underwriting agent to "Assistant Secretary for Maritime Affairs, Maritime Administration, Washington, D.C. 20230".

§ 308.553 [Revised]

10. Section 308.553 is revised to read as follows:

"All interim binders heretofore issued and now in effect shall be deemed to have been amended, effective as of the date of issuance or as of noon, eastern standard time, April 3, 1980, whichever is the later date to conform with the standard forms of binders prescribed in §§ 308.106; 308.206, and 308.305, as amended".

(Secs. 204(b), 1201–1214, Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b), 1281–1294); Reorganization Plans No. 21 of 1950 (64 Stat. 1273), and No. 7 of 1961 (75 Stat. 840), as amended by Pub. L. 91–469 (84 Stat. 1036); and Department of Commerce Organization Order 10–8 (36 FR 19077, July 23, 1973.); Pub. L. 96–195)

Dated: March 27, 1980.

By order of the Assistant Secretary of Commerce for Maritime Affairs, Maritime Administration.

Robert J. Patton, Jr.,

Secretary.

[FR Doc. 80–10156 Filed 4–2–80; 8:45 am]

BILLING CODE 3510–15–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 395

[BMCS Docket No MC–78; Amdt. No. 79–31]

Hours of Service of Drivers; 100-Mile Exemption—Driver's Logs

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This rule allows an exemption from preparing the driver's log for drivers and motor carriers who operate motor vehicles within a 100-mile radius of the place where the driver reports for work. Those drivers who choose to take advantage of the 100-mile radius exemption must return, within 12 consecutive hours, to the place they report for work each day. Further, certain time records must be maintained. This action will reduce the paperwork burden on the drivers and motor carriers while retaining adequate controls over the hours of service.

EFFECTIVE DATE: May 5, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald J. Davis, Chief, Development Branch, Regulations Division, Bureau of Motor Carrier Safety, (202) 426–9767, or Mr. Gerald M. Tierney, Motor Carrier and Highway Safety Law Division, Office of the Chief Counsel, (202) 426–0346, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rulemaking (NPRM), Docket No. MC–78, Notice No. 77–7, was published in the **Federal Register** on October 13, 1977 (42 FR 55109) to solicit comments regarding a proposed modification of the 50-mile radius exemption from log preparation requirements.

One hundred and twelve responses were filed in reply to the NPRM. Eight respondents opposed the proposal as written. Fifty-eight respondents supported the proposal as written. Thirty respondents submitted conditionally favorable responses predicated on variations of one or more elements of the proposed modification. Sixteen were considered out of the scope of the proposal. Those respondents who submitted conditionally favorable responses objected to particular elements that would require—

1. The drives to prepare a log every day if the driver operates beyond the

proposed 100-mile radius more than one day per month;

2. The driver to return (within 12 hours) to the place the driver reported for work; and

3. Time records related to those exempt operations to be retained at the carrier's principal place of business unless permission is obtained to retain the records at another location.

It is agreed that the one day per month limitation may be overly restrictive. The requirement that the motor carrier prepare and retain true and accurate time records, coupled with the 12-hour limitation, ensures that adequate records are available to determine driver compliance with the hours of service regulations.

Therefore, the proposed exemption is being modified to require log preparation on a daily basis by drivers who operate beyond the 100-mile radius more than one time in any 7 consecutive day period. If a driver operates beyond the 100-mile radius more than one time in any 7 consecutive days, a pattern of operation would be established that would require preparation of a log every day. If a motor carrier demonstrates that the driver will no longer be required to operate beyond the 100-mile radius, the exemption could then be reinstated for that particular driver. This action is in harmony with the present interpretation covering operations beyond the 50-mile radius (42 FR 60078).

Many of the commenters who favored the proposal, in general, objected to the 12-hour limitation. Those commenters indicated that there are certain places such as piers, oil refineries, steel mills, etc., where waiting times of 6–7 hours occur frequently and a driver would not exceed the 10-hour driving rule but because of the delays could exceed the 12-hour limit imposed in the 100-mile exemption rule and on those days not be entitled to the exemption. On the other hand, other commenters pointed out that the 12-hour limitation was fair considering the benefits to be gained by not having to prepare a log.

Another argument raised by certain commenters against the 12-hour limit was that some drivers may now be operating within the 50-mile radius exemption who, under the 100-mile radius exemption, would now have to prepare a log. However, since FHWA is expanding the area of operation four-fold, a limitation is necessary to ensure that the hours of service are not violated. This limitation applies only if one wants to take advantage of the 100-mile log exemption. The exemption does not alter or should not be confused with the present hours of service limitations set forth in Section 395.3 of the Federal Motor Carrier Safety Regulations (FMCSR). It should be clearly understood that once a driver exceeds that 12-hour limitation, the 100-mile exemption would no longer be applicable for that day and the hours of service for that day would have to be recorded on a driver's log.

An opponent of the proposed retention requirement for retaining time records at the motor carrier's principal place of business expressed opposition by stating that: "This would cause a needless duplication (of work) at both the branch and headquarters offices, since in almost all cases the records must be used at the branch office, and that in fact is where the supervisory personnel over the drivers are located. It is precisely these branch operations where the log exemption proposed in this docket would apply the most."

The present 50-mile radius exemption is silent concerning the retention site of accurate time records. The imposition of the proposed record retention requirement would defeat, in part, the purpose of the exemption. Therefore, the 100-mile radius exemption will also be silent concerning the location of required time records. The motor carrier will still be required to retain the time records for a period of 1 year. It should be stressed that, upon request by an authorized representative of the FHWA, the records must be produced.

Two State law enforcement agencies expressed concern about the difficulties foreseen with the adoption of the 100-mile radius exemption. One agency, of one State, which adopted the FMCSR in toto, stated that it will be very difficult to enforce the hours of service regulations on intrastate carriers. It also said that the regulations will be difficult to enforce on many interstate carriers that could operate within the 100-mile radius with little chance of detection. The other State agency contended that the exemption would cause difficulty if the driver did not have possession of a log book when operating beyond the 100-mile radius or when exceeding the 12-hour limitation. The agency recommended that the driver be required to carry a log book, maintained along with other required timekeeping records, for any tour of duty in which the driver could be reasonably expected to exceed 12 consecutive hours or the 100-mile radius.

Abuses of the 100-mile radius limitation are usually detectable by interview and records examination at the inspection site. It is reasonable to believe that both the motor carrier and the driver will know if the possibility exists that the driver will go beyond the 100-mile radius or exceed the 12-hour limitation. It will, therefore, be the responsibility of the driver and the carrier, before the driver is dispatched, to ensure that the driver has possession of a log book if the driver is expected to operate beyond the 100-mile radius or exceed the 12-hour limitation.

There is no difference between enforcing the hours of service regulations with a 50-mile radius exemption from log preparation and enforcing the regulations with a 100-mile radius exemption from log preparation. In the absence of the driver's log and other documentary evidence, an investigating officer has the alternative of investigating at the motor carrier's facility where required documents are retained.

The majority of those responding to the NPRM were in favor of making the 100-mile radius exemption available to casual or intermittent drivers as well as regularly employed drivers. The International Brotherhood of Teamsters (IBT) opposed application of the exemption to casual or intermittent drivers "primarily because of the enforcement difficulties it would present." The IBT continued: "A motor carrier could not know, for example, whether a casual driver had been employed by other carriers as a road driver during the past month, or whether his employment with other carriers would still qualify him for the exemption. * * *"

Making the exemption available to casual or intermittent drivers as well as regularly employed drivers is preferred by the motor carriers. Also, the statement of opposition made by the IBT has merit. It was decided that the exemption will be made available to the casual or intermittent driver. Any casual or intermittent driver will be required by the employing motor carrier to furnish the employing motor carrier a statement of available hours before being dispatched. This statement is expected to be sufficient to ensure compliance with the basic driving limitation if challenged by inspecting authorities. It would be inconsistent with the intent of the regulation to create more mandatory paperwork.

Many of the responses clearly indicated that some people confused the exemption from the preparation of the driver's log with the maximum driving and on-duty time requirements of § 395.3 of the FMCSR. The exemption addressed in this document allows certain drivers to operate a motor vehicle within a 100-mile radius of the place reported for work, within a 12-hour period, without recording changes in duty status during their hours of service on the prescribed driver's log. As

mentioned earlier, the exemption in no way alters the hours of service regulations, or the exemptions thereto, that appear in § 395.3 of the FMCSR.

PART 395—HOURS OF SERVICE OF DRIVERS

Accordingly, 49 CFR 395.8 and 395.9 are amended as follows:

1. By revising § 395.8(t)(1) to read:

§ 395.8 Driver's daily log.

* * * * *

(t) *Exemptions* (1) *100-mile-radius drivers.* A driver is exempt from the requirements of this section if—

(i) The driver does not operate beyond the 100-mile radius of the work reporting location more than one time in any 7 consecutive day period;

(ii) The driver, except a driver salesperson, returns to the work reporting location within 12 hours;

(iii) At least 8 consecutive hours off-duty separate each 12 hours on duty; and

(iv) The motor carrier which employs the driver maintains accurate and true records showing—

(A) The total number of hours the driver is on duty each day;

(B) The time the driver reports for duty each day;

(C) The time the driver is released from duty each day; and

(D) The total on-duty time for the preceding 7 days in accordance with paragraph (r) of this section for drivers used for the first time or intermittently.

* * * * *

2. By revising § 395.9(v)(1) to read:

§ 395.9 Driver's multi-day log.

* * * * *

(v) *Exemptions*—(1) *100-mile-radius drivers.* A driver is exempt from the requirements of this section if—

(i) The driver does not operate beyond the 100-mile radius of the work reporting location more than one time in any 7 consecutive day period;

(ii) The driver, except a driver salesperson, returns to the work reporting location within 12 hours;

(iii) At least 8 consecutive hours off-duty separate each 12 hours on duty; and

(iv) The motor carrier which employs the driver maintains accurate and true records showing—

(A) The total number of hours the driver is on duty each day;

(B) The time the driver reports for duty each day;

(C) The time the driver is released from duty each day; and

(D) The total on-duty time for the preceding 7 days in accordance with paragraph (t) of this section for drivers used for the first time or intermittently.

* * * * *

(49 U.S.C. 304, 49 U.S.C. 1655; 49 CFR 1.48(b) and 301.60)

Note.—The Federal Highway Administration has determined that this document does not contain a significant regulation according to the criteria established by the Department of Transportation pursuant to Executive Order 12044. A regulatory evaluation is available for inspection in the public docket and may be obtained by contacting Mr. Gerald J. Davis of the program office at the address specified above.

Issued on: March 17, 1980.

Robert A. Kaye,

Director, Bureau of Motor Carrier Safety.

[FR Doc. 80-10080 Filed 4-2-80; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 79-14; Notice 02]

Windshield Mounting; Windshield Zone Intrusion

AGENCY: National Highway Traffic Safety Administration (NHTSA).

ACTION: Final rule.

SUMMARY: This notice amends two safety standards, Standard No. 212, *Windshield Mounting*, and Standard No. 219, *Windshield Zone Intrusion*, to limit the maximum unloaded vehicle weight at which vehicles must be tested for compliance with these standards. This action is being taken in response to petitions from the Truck Body and Equipment Association and the National Truck Equipment Association asking the agency to amend the standards to provide relief from some of the test requirements for final-stage manufacturers. Many of these small manufacturers do not have the sophisticated test devices of major vehicle manufacturers. The agency concludes that the weights at which vehicles are tested can be lessened while providing an adequate level of safety for vehicles such as light trucks and while ensuring that compliance with these standards does not increase their aggressivity with respect to smaller vehicles.

EFFECTIVE DATE: Since this amendment relieves a restriction by easing the existing test procedure and will not impose any additional burdens upon any manufacturer, it is effective April 3, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Willian Smith, Crashworthiness Division, National Highway Traffic Safety Administration, 400 Seventh St. SW., Washington, D.C. 20590 (202-426-2242).

SUPPLEMENTARY INFORMATION: On August 2, 1979, the National Highway Traffic Safety Administration published a notice of proposed rulemaking (44 FR 45426) relating to two safety standards: Standard Nos. 212, *Windshield Mounting*, and 219, *Windshield Zone Intrusion*. That notice proposed two options for amending the test procedures of the standards that were designed to ease the compliance burdens of small final-stage manufacturers.

The agency issued the proposal after learning that final-stage manufacturers were frequently unable to certify certain vehicles in compliance with these two safety standards. The problem arises because of weight and center of gravity restrictions imposed upon the final-stage manufacturer by the incomplete vehicle manufacturer. The final-stage manufacturer typically purchases an incomplete vehicle from an incomplete vehicle manufacturer, usually Ford, General Motors or Chrysler. The incomplete vehicle usually includes the windshield and mounting but does not include any body or work performing equipment. Since the incomplete vehicle manufacturer installs the windshield, it represents to the final-stage manufacturer that the windshield will comply with the two subject safety standards. In making this representation, however, the incomplete vehicle manufacturer states that the representation is contingent on the final-stage manufacturer's adherence to certain restrictions. Any final-stage manufacturer that does not adhere to the restrictions imposed by the incomplete vehicle manufacturer must recertify the vehicle based upon its own information, analysis, or tests. The major restrictions imposed by the incomplete vehicle manufacturers on the final-stage manufacturer involve weight and center of gravity limitations. In many instances, these limitations have made it impossible for final-stage manufacturers either to rely on the incomplete vehicle manufacturer's certification or to complete vehicles on the same chassis that they were accustomed to using (prior to the extension of the two safety standards to these vehicle types). As a result, the final-stage manufacturer is faced either with buying the same chassis as before and recertifying them or with buying more expensive chassis with higher

GVWR's and less stringent weight and center of gravity limitations.

The agency has tried several different ways to alleviate this problem for the final-stage manufacturer. The NHTSA has met with representatives of the major incomplete vehicle manufacturers to encourage them to respond voluntarily by strenthening their windshield structures and reducing the restrictions that they currently impose upon final-stage manufacturers. The agency also discussed the possibility of its mandating these actions by upgrading Standards Nos. 212 and 219. Ford and General Motors indicated that the making of any major changes in these standards could lead to their deciding to discontinue offering chassis for use in the manufacturing of multi-stage vehicles. They said that such chassis were a very small percentage of their light truck sales and that, therefore, they would not consider it worth the cost to them to make any extensive modifications in their vehicles. NHTSA also asked the incomplete vehicle manufacturers to be sure that they have properly certified their existing vehicles and that they are not imposing unnecessarily restrictive limitations upon final-stage manufacturers. To this agency's knowledge, these vehicle manufacturers have neither undertaken any strengthening of their vehicles' windshield structures nor lessened any of their restrictions.

At the same time that the agency was made aware of the final-stage manufacturers' problems of certifying to these standards, the agency was becoming concerned about the possibility that compliance of some light trucks and vans with these standards might have made the vehicles more aggressive with respect to smaller passenger cars that they might impact. According to agency information, if these standards require a substantial strengthening of vehicle frames, the aggressivity of the vehicles is increased. Therefore, as a result of the agency's concern about aggressivity and its desire to address the certification problems of final-stage manufacturers in a manner that would not lead to a cessation of a chassis sales to those manufacturers, the agency issued the August 1979 proposal. The agency hoped that the proposal would allow and encourage incomplete vehicle manufacturers to reduce their weight and center of gravity restrictions, thereby easing or eliminating the compliance test burdens of final-stage manufacturers. The agency believed that this could occur using either option because either would result in vehicles being tested at lower weights. Currently vehicles are tested under both standards at their unloaded vehicle weights plus 300 pounds.

The first option would have required some vehicles whose unloaded vehicle weights exceeded 4,000 pounds to be tested by being impacted with a 4,000 pound moving barrier. The second option proposed by the agency would have required vehicles to be tested at their unloaded vehicle weight up to a maximum unloaded vehicle weight of 5,500 pounds. This option was suggested to the agency by several manufacturers and manufacturer representatives.

Comments on Notice

In response to the agency's notice, nine manufacturers and manufacturer representatives submitted comments. All of the commenters supported some action in response to the problems of final-stage manufacturers. Most of the commenters also suggested that the agency's second alternative solution was more likely to achieve reductions in the restrictions being imposed by incomplete vehicle manufacturers. The first option would have created a new, unproven test procedure, and manufacturers would have been cautious in easing center of gravity or weight restrictions based upon this test procedure. Accordingly, most commenters were not sure that the first option would achieve the desired results. The consensus was, therefore, that the second option should be adopted.

Some manufacturers recommended that both options be permitted allowing the manufacturer to decide how to test its vehicles. The agency does not agree with this recommendation. Not only would it be more difficult and expensive to enforce a standard that has alternative test procedures, but most manufacturers prefer the 5,500 pound weight limit option. The NHTSA concludes that as a result of the comments supporting the 5,500 pound maximum test weight, that this is an acceptable procedure for testing compliance with these two standards. Therefore, the standards are amended to incorporate this procedure.

The major incomplete vehicle manufacturers commenting on the notice suggested that testing vehicles at a maximum weight of 5,500 pounds might provide some immediate relief. None of the major incomplete vehicle manufacturers provided any information concerning how substantial that relief might be. Ford indicated that any relief might be limited.

The agency believes that the incomplete vehicle manufacturers must accept the responsibility for establishing reasonable restrictions upon their incomplete vehicles. The NHTSA has not been provided with sufficient evidence substantiating the statements of the incomplete vehicle manufacturers that their existing restrictions are reasonable. In fact, some evidence indicates that unnecessarily stringent restrictions are being imposed because incomplete vehicle manufacturers do not want to conduct the necessary testing to establish the appropriate weight and center of gravity restrictions. Since this amendment should reduce the severity of the test procedures, the agency concludes that incomplete vehicle manufacturers should immediately review their certification test procedures and reduce the restrictions being passed on to final-stage manufacturers.

Due to changes in the light truck market, there is reason to believe that the incomplete vehicle manufacturers will be more cooperative than when the agency spoke to them before beginning this rulemaking. At that time, light truck sales were still running well. Now that these sales are down, these manufacturers may be more solicitous of the needs of the final-stage manufacturers. If relief is not provided by the incomplete vehicle manufacturers, then the agency will consider taking additional steps, including the upgrading of Standards Nos. 212 and 219 as they apply to all light trucks.

General Motors (GM) questioned one of the agency's rationales for issuing the notice of proposed rulemaking. GM stated that the agency concludes that this action will provide a more appropriate level of safety for the affected vehicles while the initial extension of these standards to the affected vehicles provided, in GM's view, only a slight increase in the level of safety of the vehicles. GM indicates that since the application of these standards to the affected vehicles provided only slight benefits and since this amendment will reduce those benefits, the standards should not apply to light trucks and vans. The agency disagrees with this suggestion.

The agency is currently reviewing the applicability of many of its safety standards to determine whether they ought to be extended to light trucks and other vehicles. Accident data clearly indicate the benefits that have resulted from the implementation of safety standards to cars. The fatality rate for passenger cars has decreased substantially since the implementation of a broad range of safety standards to those vehicles. On the other hand, light

trucks and vans have not had a corresponding reduction in fatality rates over the years. The agency attributes much of this to the fact that many safety standards have not been applied to those vehicles. Since those vehicles are becoming increasingly popular as passenger vehicles, the agency concludes that safety standards must apply to them.

In response to GM's comment that this reduction in the test requirements for Standards Nos. 212 and 219 will remove all benefits derived by having the standards apply to those vehicles, the agency concludes that GM has misinterpreted the effects of this amendment. This amendment will reduce somewhat the compliance test requirements for those light trucks and vans with unloaded vehicle weights in excess of 5,500 pounds. It will not affect light trucks with unloaded vehicle weights below 5,500 pounds. According to agency information, approximately 25 percent of the light trucks have unloaded vehicle weights in excess of 5,500 while the remainder fall below that weight. As a result of weight reduction to improve fuel economy, its is likely that even more light trucks will fall below the 5,500 pound maximum test weight in the future. Therefore, this amendment will have no impact upon most light trucks and vans. In light of the small proportion of light trucks and vans affected by this amendment and considering the potential benefits of applying these standards to all light trucks and vans, the agency declines to adopt GM's suggestion that the standards be made inapplicable to these vehicles.

With respect to GM's question about the appropriate level of safety for light trucks, the agency's statement in the notice of proposed rulemaking was intended to show that the safety of light trucks and vans cannot be viewed without considering the relative safety of lighter vehicles that they may impact. Accordingly, the level of safety that the agency seeks to achieve by this and other safety standards is determined by balancing the interests of the occupants of passenger cars and heavier vehicles.

GM also questioned the agency's statement that vehicle aggressivity may be increased by imposing too severe requirements on these vehicles. GM suggested that no evidence exists that vehicle aggressivity is increased as a result of complying with these standards.

The agency stated in the proposal that it was concerned that compliance with the standards as they now exist might have increased the aggressivity of the vehicles, thereby harming the occupants of passenger cars that are impacted by these larger, more rigid vehicles. The agency is now beginning to examine the full range of vehicle aggressivity problems. The docket for this notice contains a paper recently presented by a member of our staff to the Society of Automotive Engineers on this subject. The agency tentatively concludes, based upon the initial results of our research and analysis, that vehicle aggressivity could be a safety problem and that the agency considers that possibility in issuing its safety standards. The NHTSA notes that Volkswagen applauds the agency's recognition of the vehicle aggressivity factor in safety.

As to GM's argument that compliance with the standards may not have increased vehicle aggressivity, our information on this point came from the manufacturers. The manufacturers indicated that compliance with Standards 212 and 219 requires strengthening the vehicle frame. This makes a vehicle more rigid. Our analysis indicates that making a vehicle more rigid may also make it more aggressive. Therefore, the agency concludes partially on the basis of the manufacturer's information, that compliance with the safety standards as they are written may have increased the aggressivity of the vehicles.

Ford Motor Company suggested that, rather than change these two particular standards, the agency should amend the certification regulation (Part 568) to state that any vehicle that is barrier tested would be required only to comply to an unloaded vehicle weight of 5,500 pounds or less. Ford suggested that this would standardize all of the tests and provide uniformity.

The agency is unable to accept Ford's recommendation for several reasons. First, the certification regulation is an inappropriate place to put a test requirement applicable to several standards. The tests requirements of the standards should be found in each standard. Second, the Ford recommendation would result in a reduction of the level of safety currently imposed by Standard No. 301, *Fuel System Integrity*.

As we stated earlier and in several other notices, the agency is legislatively forbidden to modify Standard No. 301 in a way that would reduce the level of safety now required by that standard. Even without this legislative mandate, the agency would not be likely to relieve the burdens imposed by Standard No. 301. That standard is extremely important for the prevention of fires during crashes. compliance of a vehicle with this standard not only protects the occupants of the vehicle that is in compliance but also protects the occupants of vehicles that it impacts. The agency concludes that the standard now provides a satisfactory level of safety in vehicles, and NHTSA would not be likely to amend it to reduce these safety benefits even if such an amendment were possible.

With respect to fuel system integrity, several manufacturers suggested that the agency had underestimated the impact of that standard upon weight and center of gravity restrictions. These commenters indicated that compliance with that standard requires more than merely adding shielding to the fuel systems of the vehicles. The agency is aware that compliance with that standard in certain instances has imposed restrictions upon manufacturers. Nonetheless, the agency continues to believe that as a result of this amendment, the chassis manufacturers will be able to reduce their weight and center of gravity restrictions while still maintaining the compliance of their vehicles with Standard No. 301.

Chrysler commented that the agency should consider including the new test procedure in Standard No. 204 and all other standards that require barrier testing. The agency has issued a notice on Standard No. 204 (44 FR 68470) stating that it was considering a similar test provision for that standard. The agency also is aware that any barrier test requirement imposed upon vehicles subject to substantial modifications by final-stage manufacturers will create problems for the final-stage manufacturers. Accordingly, the agency will consider the special problems of these manufacturers prior to the issuance of standards that might affect them and will attempt to make the test requirements of the various standards consistent wherever possible.

The agency has reviewed this amendment in accordance with Executive Order 12044 and concludes that it will have no significant economic or other impact. Since the regulation relieves some testing requirements, it may slightly reduce costs associated with some vehicles. Accordingly, the agency concludes that this is not a significant amendment and a regulatory analysis is not required.

In accordance with the foregoing, Volume 49 of the Code of Federal Regulations Part 571 is amended by adding the following sentence to the end of paragraph § 6.1(b) of Standard No. 212 (49 CFR 571.212) and paragraph § 7.7(b) of Standard No. 219 (49 CFR 571.219).

Vehicles are tested to a maximum unloaded vehicle weight of 5,500 pounds.

The authors of this notice are William Smith of the Crashworthiness Division and Roger Tilton of the Office of Chief Counsel.

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

Issued on March 28, 1980.

Joan Claybrook,

Administrator.

[FR Doc. 80-9930 Filed 3-28-80; 11:37 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 26

Opening of Chincoteague National Wildlife Refuge to Public Access, Use and Recreation

AGENCY: United States Fish and Wildlife Service, Department of the Interior.

ACTION: Special Regulation.

SUMMARY: The Director has determined that the opening to public access, use and recreation of Chincoteague National Wildlife Refuge is compatible with the objectives for which the area was established and will provide additional recreational opportunity to the public through a non-consumptive use. This document amends and completely replaces the special regulations governing this use published on page 77168, **Federal Register**, Volume 44, No. 251, Monday, December 31, 1979.

DATES: April 15, 1980 through December 31, 1982.

ADDRESSES: Contact the Refuge Manager at the address and/or telephone number listed below in the body of Special Regulations.

FOR FURTHER INFORMATION CONTACT: Howard N. Larsen, Regional Director, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158 (617/965-5100 Ext. 200).

SUPPLEMENTARY INFORMATION: Public access, use and recreation is permitted on Chincoteague National Wildlife Refuge in accordance with 50 CFR 26 and the following Special Regulations. Portions of the refuge which are open to public access, use and recreation are designated by signs and/or shown on maps available from addresses indicated below. No vehicle travel is permitted except on designated roads and trails. Special Regulations applying to Chincoteague Refuge are listed on leaflets available at refuge headquarters and from the Regional Director, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158.

The Refuge Recreation Act of 1962 (16 U.S.C. 460k) authorizes the Secretary of the Interior to administer such areas for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary objective for which the area was established. In addition, the Refuge Recreation Act requires (1) that any recreational use permitted will not interfere with the primary purpose for which the area was established; and (2) that funds are available for the development, operation, and maintenance of the permitted forms of recreation.

The recreational use authorized by these regulations will not interfere with the primary purpose for which these National Wildlife Refuges were established. This determination is based upon consideration of among other things, the Service's Final Environmental Statement on the Operation of the National Wildlife Refuge System published in November 1976. Funds are available for the administration of the recreational activities permitted by these regulations.

Public entry shall be in accordance with all applicable Federal and State laws and regulations subject to the following special regulations:

§ 26.34 Special regulations; public access, use and recreation; for individual wildlife refuge areas.

Public access, use and recreation is permitted on the Chincoteague National Wildlife Refuge, P. O. Box 62, Chincoteague, Virginia 23336. Contact the Refuge Manager at 804/336-6122. Special Conditions: Entry into the refuge is permitted between the hours of 4:00 AM to 10:00 PM daily from April 1 to November 30 and from one-half hour before sunrise to one-half hour after sunset from December 1 to March 31 for the purposes of sightseeing, nature study, wildlife observation, photography, hiking, beachcombing, kite flying, sunbathing and fishing, including clamming and crabbing, as posted. Swimming and surfing are permitted as posted on the ocean beach. Fishing, kite flying, and possession of glass containers are prohibited within the protected beach areas. The use or possession of metal detectors is not permitted on the refuge. Entry into the refuge by boat is permitted at the designated public use areas at Tom's Cove Hook and the public use area operated by the Town of Chincoteague at Assateague Point. Picnicking and contained fires are permitted at Tom's Cove Hook in designated areas. Open fires by special permit only. All fires must be extinguished by water. Operation of registered motor vehicles and bicycles is permitted on designated access roads, trails, and parking areas. No vehicle may be left on the area during closed hours except by special permit. Motorcycles or mopeds with motor in operation are not permitted on the Wildlife Drive or on other trails designated for foot or bicycle use. The use of mopeds or motorized bicycles shall be governed as follows: as a bicycle when motor is not in operation; as a motorcycle when motor is in operation; the methods of operation, equipment, license and registration requirements shall be the same as those set by the State of Virginia. Riding of horses and other saddle animals is permitted only along the shoulder of the access road to the Coast Guard crossover and thence only within designated areas along the beach. Pets are not permitted on the refuge. Off-road travel by oversand vehicles is permitted only on designated routes within the public use areas at Tom's Cove Hook. Driving so as to cut circles or otherwise needlessly deface the sand dunes or vegetation is prohibited. Speed may not exceed 25 miles per hour. When approaching or passing within 100 feet of a pedestrian or person on horseback, speed must be reduced to 15 miles per hour. Pedestrians and horseback riders always have the right of way. Oversand vehicles may not be used to tow persons on any recreational device over sand, or in the water or air. An annual permit at a fee of $15.00 or a seven-day permit at a fee of $10.00 is required for oversand vehicle use. Such permits are not transferable and shall be displayed as directed by the refuge manager. The annual permit shall be valid from April 15 to April 14 of the following year. All oversand vehicles must conform to applicable State laws having to do with licensing, registering, inspecting and insuring of such vehicles. Motorcycles and mopeds must remain on designated access roads and are not permitted in oversand vehicle areas. All oversand vehicles must carry at all times on the beach, shovel, jack, tow rope or chain, board or similar support for the jack and low pressure tire gauge. No permit will be issued for a vehicle which does not meet the following standards:

On four-wheel-drive vehicles:
Maximum vehicle length—26 feet.
Maximum vehicle width—8 feet.
Minimum ground clearance—7 inches.

Gross vehicle weight rating may not exceed—10,000 lbs.
Maximum number of axles—2.
Maximum number of wheels per axle—2.
Minimum number of wheels—4.

On two-wheel-drive vehicles in addition to the seven items listed above: Minimum width of tire contact on the sand—8 inches each wheel. Tires with regular mud/snow treads are not acceptable. The refuge manager may issue a single trip permit for a vehicle of greater weight or length when such use is not inconsistent with the purposes of the regulations. Forty-two (42) oversand vehicles are permitted in the oversand zone. The refuge manager may temporarily close or limit access to the beach when this level is reached. Special event permits may be issued by the refuge manager. Oversand vehicle permits issued by the National Park Service for operation on the Assateague Island National Seashore will also be honored for operation on the designated oversand vehicle routes within the public use areas at Tom's Cove Hook.

Fishermen who hold special overnight beach-fishing permits may remain on the refuge during closed hours on the dates for which such permit is issued. At least one member of the fishing party must be actively engaged in fishing at all times while on the refuge, under the terms of the permit. Organized youth-group and backpack camping is permitted by advance reservation only. Daily fee for youth group camping is $5.00 per site.

On that portion of the Chincoteague National Wildlife Refuge known as Tom's Cove Hook and described as the area bounded on the north by the wildlife fence adjacent to the main parking lot, on the east and south by the Atlantic Ocean extending to Fishing Point, and on the west by the waters of Tom's Cove to and along the canal in Swan Cove adjacent to the main parking lot, authorized National Park Service personnel may enforce the above regulations utilizing policies, procedures of the Assateague Island National Seashore, or if properly deputized, may utilize policies, procedures and authorities normally associated with law enforcement procedures of the Chincoteague National Wildlife Refuge.

The provisions of this special regulation supplement the regulations which govern public access, use and recreation on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 26. The public is invited to offer suggestions and comments at any time.

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

Administrative needs require that the Chincoteague Refuge oversand vehicle regulations and permit requirements be implemented concurrent with those of the National Park Service. It is therefore found impracticable to issue regulations that would be effective 30 days after publication in accordance with Department of the Interior general policy.

David F. Riley,

Acting Regional Director, Fish and Wildlife Service.

[FR Doc. 80-10176 Filed 4-2-80; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 45, No. 66
Thursday, April 3, 1980

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.

EXECUTIVE OFFICE OF THE PRESIDENT

Office of Administration

5 CFR Part 2504

Privacy Act of 1974; Proposed Implementation Regulations

AGENCY: Office of Administration, Executive Office of the President.

ACTION: Proposed Rule.

SUMMARY: The following proposed regulations, drafted in accordance with the Privacy Act of 1974 (5 U.S.C. 552a(f)), are hereby offered for public comment. These regulations establish procedures for an individual to determine if the Office of Administration has a record[1] pertaining to them, and to gain access to that record for purposes of review, amendment, and correction.

DATE: Comments are due on or before May 5, 1980.

ADDRESS: Send comments to Sarah T. Kadec, Deputy Director, Office of Administration, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Donald Street, Assistant to the Deputy Director, 456–2970.

It is proposed to add the following Part 2504 to Title 5 of CFR.

Sarah T. Kadec,
Deputy Director.

PART 2504—PRIVACY ACT REGULATIONS

Sec.

2504.1 Purpose and scope.
2504.2 Definitions.
2504.3 Annual notice of systems of records maintained by the Office.
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2504.9 Identification requirements.
2504.10 Access of others to records about an individual.
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2504.12 Denials of access.
2504.13 Requirements for requests to amend records.
2504.14 Action on request to amend a record.
2504.15 Procedures for appeal of determination to deny access to or amendment of records.
2504.16 Appeals process.
2504.17 Fees.
2504.18 Penalties.

Authority.—5 U.S.C 552a.

§ 2504.1 Purpose and scope.

These regulations implement the Privacy Act of 1974, 5 U.S.C. 552a. The regulations apply to all records maintained by the Office of Administration that are contained in a system of records, and that contain information about an individual. The regulations also establish procedures that (a) authorize an individual's access to records maintained about him (or her); (b)limit the access of other persons to those records, and (c) permit an individual to request the amendment or corrections of records about him (or her).

§ 2504.2 Definitions.

For the purposes of this part—

(a) "Office" means the Office of Administration, Executive Office of the President;

(b) "Individual" means a citizen of the United States or an alien lawfully admitted for permanent residence;

(c) "Maintain" means collect, use or distribute;

(d) "Record" means any item, collection or grouping of information about an individual that is maintained by the Office, including but not limited to education, financial transactions, medical history, and criminal or employment history and that contains the individual's name, identifying number, symbol, or other identifiers assigned to the individual, such as a finger or voice print or photograph;

(e) "System of records" means a group of any records controlled by the Office and from which information is retrieved by the name of the individual;

(f) "System manager" means the employee of the Office who is responsible for the maintenance, collection, use or distribution of information contained in a system of records;

(g) "Routine use" means, with respect to the disclosure of a record, the use of that record for a purpose consistent with the purpose for which it was collected;

(h) "Subject individual" means the individual named or discussed in a record or the individual to whom a record otherwise pertains;

(i) "Statistical record" means record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of Title 13 U.S.C.;

(j) "Agency" means agency as defined in 5 U.S.C. 552(e).

(k) "Work days" as used in calculating the date when response is due does not include Saturdays, Sundays and legal public holidays.

§ 2504.3 Annual notice of systems of records maintained by the office.

(a) The Office will publish in the **Federal Register** an annual notice describing the systems of records the Office maintains. The notices shall include (a) the system name, (b) the system location, (c) the categories of individuals covered by the system, (d) the categories of records in the system, (e) the Office's authority to maintain the system, (f) the routine uses of the system, (g) the Office's policies and practice for maintenance of the system, (h) the system manager, (i) the procedures for notification, access to and correction of records in the system, and (j) the sources of information for the system.

(b) Notices shall also be published, as required by the Privacy Act of 1974, of significant changes in or additions to the Office's systems of records.

§ 2504.4 Determining if an individual is the subject of a record.

(a) Individuals desiring to know if a specific system of records maintained by the Office contains a record pertaining to them should address inquiries to the Deputy Director, Office of Administration, Washington, D.C. 20503.

(b) Inquiries must be in writing and the words "PRIVACY ACT REQUEST" should be printed on both the letter and the envelope. The request letter should contain the complete name and

[1] See the Notices Section of this issue for the systems of records maintained by the Executive Office of the President, the Office of Administration.

identifying number of the pertinent system as published in the annual **Federal Register** notice describing the Office's Systems of Records; the full name and address of the subject individual; a brief description of the nature, time, place and circumstances of the individual's association with the Office; and any other information the individual believes would help the Deputy Director determine whether the information about the individual is included in the system of records. In instances when the information is insufficient to ensure disclosure to the subject individual to whom the record pertains, the Office reserves the right to ask the requestor for additional identifying information.

(c) To the extent possible, the Deputy Director will answer or acknowledge the inquiry within 10 working days of its receipt by the Office. When the response cannot be made within 10 work days, the Deputy Director will provide the requestor with the date when a response may be expected and, whenever possible, the specific reasons for the delay.

§ 2504.5 Granting access to a record.

(a) An individual requesting access to a record about them in a system of records maintained by the Office should submit the request in writing to the Deputy Director. Due to security measures at the Old and New Executive Office Buildings, requests made in person can only be accepted from current Office employees, who should make access requests to the Deputy Director on regularly scheduled work days between 9:00 a.m. and 5:30 p.m.

(b) The request for access should contain the same information set forth in § 2504.4(b) of this part. However, if the request for access follows a request made under §§ 2504.4 (a) and (b) of this part, the same identifying information need not be included, PROVIDED THAT a copy of the prior request or a copy of the Office's response to that request is attached. The request should state if a copy of the record is desired.

§ 2504.6 Special procedures for medical records.

(a) When the Deputy director receives a request from an individual for access to those official medical records which belong to the Office of Personnel Management and are described in Chapter 339, Federal Personnel Manual (medical records about entrance qualification or fitness for duty, or medical records which are otherwise filed in the Official Personnel Folder), the pertinent records shall be referred to a Federal Medical Officer for review and determination in accordance with this section. If no Federal Medical Officer is available to make the determination required by this section, the Deputy Director shall refer the request and the medical reports concerned to the Office of Personnel Management for determination.

(b) If, in the opinion of a Federal Medical Officer, medical records requested by the subject individual indicate a condition about which a prudent physician would hesitate to inform a person suffering from such a condition of its exact nature and probable outcome, the Deputy Director shall not release the medical information to the subject individual nor to any person other than a physician designated in writing by the subject individual, his guardian, or conservator.

(c) If, in the opinion of a Federal Medical Officer, the medical information does not indicate the presence of any condition which would cause a prudent physician to hestitate to inform a person suffering from such a condition of its exact nature and probable outcome, the Deputy Director shall release it to the subject individual or to any person, firm, or organization which the individual authorizes in writing to receive it.

§ 2504.7 Granting access when accompanied by another individual.

An individual who wishes to have a person of his choosing review, accompany him (or her) in reviewing, or obtain a copy of a record must, prior to the disclosure, sign a statement authorizing the disclosure of his record. The statement shall be maintained with the record.

§ 2504.8 Action on request for access.

(a) The Deputy Director shall acknowledge requests for access within 10 work days of its receipt by the Office. At a minimum, the acknowledgement shall include:

(1) When and where the records will be available;

(2) The name, title and telephone number of the official who will make the records available;

(3) Whether access will be granted only through providing a copy of the record through the mail, or only by examination of the record in person if the Deputy Director has determined the requestor's access would not be unduly impeded;

(4) Fee, if any, charged for copies. (See § 2504.17 of this part); and

(5) Identification documentation required to verify the identify of the requestor (see § 2504.9 of this part).

2504.9 Identification requirements.

(a) A requestor should be prepared to identify himself (or herself) by signature, i.e., to note by signature the date of access and/or to produce two other legal forms of identification (driver's license, employee identification, annuitant card, passport, etc.).

(b) If an individual is unable to produce adequate identification, the individual shall sign a statement asserting identity and acknowledging that knowingly or willfully seeking or obtaining access to records about another person under false pretenses may result in a fine of up to $5,000 (see § 2504.18). In addition, depending upon the sensitivity of the records, the Deputy Director may require further reasonable assurances, such as statements of other individuals who can attest to the identity of the requestor.

(c) If access is granted by mail, the identity of the requestor shall be verified by comparing signatures. If, in the opinion of the Deputy Director, the granting of access through the mail may result in harm or embarrassment if disclosed to a person other than the subject individual, a notarized statement of identity or some other similar assurance of identity will be required.

§ 2504.10 Access of others to records about an individual.

(a) No official or employee of the Office shall disclose any record to any person or to another agency without the express written consent of the subject individual, unless the disclosure is:

(1) To officers or employees of the Office who need information to perform their official duties;

(2) Under the requirements of the Freedom of Information Act;

(3) For a routine use that has been published in a notice in the **Federal Register**;

(4) To the Bureau of the Census for uses under Title 13 of the United States Code;

(5) To a person or agency who has given the Office advance written notice of the purpose of the request and certification that the record will be used only for statistical purposes. (In addition to deleting personal identifying information from records released for statistical purposes, the Deputy Director shall ensure that the identity of the individual cannot reasonably be deduced by combining various statistical records);

(6) To the National Archives of the United States if a record has sufficient historial or other value to be preserved by the United States Government, or to the Deputy Director (or a designee) to

determine whether the record has that value;

(7) In response to written request, that identifies the record and the purpose of the request, made by another agency or instrumentality of any Government jurisdiction within or under the control of the United States for civil or criminal law enforcement activity, if that activity is authorized by law;

(8) To a person who, showing compelling circumstances, needs the information to prevent harm to the health or safety of an individual, but not necessarily the individual to whom the record pertains (upon such disclosure, a notification shall be sent to the last known address of the subject individual);

(9) To either House of Congress, or to a Congressional committee or subcommittee if the subject matter is within its jurisdiction;

(10) To the Comptroller General, or an authorized representative, to carry out the duties of the General Accounting Office; or

(11) Pursuant to a court order.

§ 2504.11 Access to the accounting of disclosures from records.

(a) Rules governing access to the accounting of disclosures are the same as those granting access to the records.

§ 2504.12 Denials of access.

(a) The Deputy Director may deny an individual access to his (or her) record if:

(1) In the opinion of the Deputy Director, the individual seeking access has not provided sufficient identification documentation to permit access; or

(2) The Office has published rules in the **Federal Register** exempting the pertinent system of records from the access requirement.

(b) If access is denied, the requestor shall be informed of the reasons for denial and the procedures to obtain a review of the denial (see § 2504.15 of this part).

§ 2504.13 Requirements for requests to amend records.

(a) Individuals who desire to correct or amend a record pertaining to them should submit a written request to the Deputy Director, Office of Administration, Washington, D.C., 20500. The words "PRIVACY ACT—REQUEST TO AMEND RECORD" should be written on the letter and the envelope.

(b) The request for amendment or correction of the record must state the exact name of the system of records as published in the **Federal Register**; a precise description of the record proposed for amendment; a brief statement describing the information the requestor believes to be inaccurate or incomplete, and why; and, the amendment or correction desired. If the request to amend the record is the result of the individual's having accessed the record in accordance with §§ 2504.5, 2504.6, 2504.7, and 2504.8 of this part, copies of previous correspondence between the requestor and the Office should be attached, if possible.

(c) Individuals needing assistance in preparing a request to amend a record may contact the Deputy Director at the address cited in paragraph (a) of this section.

(d) If the individual's identity has not been previously verified, the Office may require identification documentation as described in § 2504.9 of this part.

§ 2504.14 Action on request to amend a record.

(a) To the extent possible, a request for amendment of a record will be answered within 10 work days of its receipt by the Office. If a decision cannot be made within this time, the requestor will be informed by mail of the reasons for the delay and the date when a reply can be expected, normally within 30 work days from receipt of the request.

(b) The final response will include the Office's determination of whether to grant or deny the request. If the request is denied, the response will include:

(1) The reasons for the decision;

(2) The name and address of the official to whom an appeal should be directed;

(3) The name and address of the official designated to assist the individual in preparing the appeal;

(4) A description of the appeal process within the Office; and

(5) A description of any other procedures which may be required of the individual in order to process the appeal.

§ 2504.15 Procedures for appeal of determination to deny access to or amendment of records.

(a) Individuals who disagree with the refusal of the Office to grant them access to or to amend a record about them should submit a written request for review to the Deputy Director, Office of Administration, Washington, D.C. 20500. The words "PRIVACY ACT—APPEAL" should be written on the letter and the envelope. Individuals desiring assistance preparing their appeal should contract the Deputy Director.

(b) The appeal letter must be received by the Office within 30 calendar days from the date the requestor received the notice of denial. At a minimum, the appeal letter should identify:

(1) The records involved;

(2) The date of the initial request for access to or amendment of the record;

(3) The date of the Office denial of that request;

(4) The reasons supporting the request for reversal of the Office's decision.

Copies of previous correspondence from the Office denying the request to access or amend the record should also be attached, if possible.

(c) The Office reserves the right to dispose of correspondence concerning the request to access or amend a record if no request for review of the Office's decision is received within 180 days of the decision date. Therefore, a request for review received after 180 days may, at the discretion of the Deputy Director, be treated as an initial request to access or amend a record.

§ 2504.16 Appeals process.

(a) Within 20 work days of receiving the request for review, a review group composed of the Deputy Director, the General Counsel and the Official having operational control over the record, will issue a determination on the appeal, in writing, to the requestor. If a final determination cannot be made in 20 days, the requestor will be informed of the reasons for the delay and the date on which a final decision can be expected. Such extensions are unusual, and should not exceed an additional 30 work days.

(b) If the original request was for access and the initial determination is reversed, the procedures in § 2504.8 of this part will be followed. If the initial determination is upheld, the requestor will be so advised and informed of the right to judicial review pursuant to 5 U.S.C. 552a(g).

(c) If the initial denial of a request to amend a record is reversed, the Office will correct the record as requested and advise the individual of the correction. If the original decision is upheld, the requestor will be so advised and informed in writing of the right to judicial review pursuant to 5 U.S.C. 552a(g). In addition, the requestor will be advised of his (or her) right to file a concise statement of disagreement with the Deputy Director. The statement of disagreement should include an explanation of why the requestor believes the record is inaccurate, irrelevant, untimely or incomplete. The Deputy Director shall maintain the statement of disagreement with the disputed record, and shall include a copy of the statement of disagreement in any disclosure of the record.

Additionally, the Deputy Director shall provide a copy of the statement of disagreement to any person or agency to whom the record has been disclosed, if the disclosure was made pursuant to § 2504.10 (5 U.S.C. 552(a)(c)).

§ 2504.17 Fees.

(a) Individuals will not be charged for:

(1) The search and review of the record;

(2) Any copies produced to make the record available for access;

(3) Copies of the requested record if access can only be accomplished by providing a copy through the mail; and

(4) Copies of three (3) or less pages of a requested record.

(b) Records will be photocopied for 10¢ per page for four pages or more (except for (a), (1), (2), (3), (4) above). If the record is larger than 8½ x 14 inches, the fee will be the cost of reproducing the record through Government or commercial sources.

(c) Fees shall be paid in full prior to issuance of requested copies. Payment shall be by personal check or money order payable to the Treasurer of the United States, and mailed or delivered to the Deputy Director, Office of Administration, Washington, D.C. 20503.

(d) The Deputy Director may waive the fee if:

(1) The requestor is an employee of the Office and copies requested do not exceed 50 pages;

(2) The cost of collecting the fee exceeds the amount collected; and

(3) The production of the copies at no charge is in the best interest of the government.

(e) A receipt will be furnished on request.

§ 2504.18 Penalties.

(a) Title 18, U.S.C. Section 1001, Crimes and Criminal Procedures, makes it a criminal offense, subject to a maximum fine of $10,000 or imprisonment for not more than five years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representation in any matter within the jurisdiction of any agency of the United States. Section (i)(3) of the Privacy Act (5 U.S.C 552a) makes it a misdemeanor, subject to a maximum fine of $5,000 to knowingly and willfully request or obtain any record concerning an individual under false pretenses. Sections (i) (1) and (2) or 5 U.S.C. 552a provide penalties for violations by agency employees of the Privacy Act or regulations established thereunder.

[FR Doc. 80-10003 Filed 4-2-80; 8:45 am]

BILLING CODE 3115-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 80-AL-3]

Proposed Designation of Alternate Airway

AGENCY: Federal Aviation Administration. (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to designate a south alternate to V-321 airway between King Salmon, Alaska, and Homer, Alaska, to provide an additional route and a reduction in traffic delays caused by congestion during peak traffic periods.

DATES: Comments must be received on or before May 5, 1980.

ADDRESSES: Send comments on the proposals in triplicate to: Director, FAA Alaska Region, Attention: Chief, Air Traffic Division, Docket No. 80-AL-3, Federal Aviation Administration, P.O. Box 14, 701 C Street, Anchorage, Alaska 99513.

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 offfice of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: 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.

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, Alaska Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, P.O. Box 14, 701 C Street, Anchorage, Alaska 99513. All communications received on or before May 5, 1980, 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 § 71.125 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) that would add a south alternate to V-321 airway to relieve congestion on a segment of this airway between King Salmon and Homer, Alaska. The proposed action would designate V-321S from King Salmon via the INT of King Salmon 087°T(066°M) and Homer 237°T(213°M) radials. Section 71.125 of Part 71 was republished in the **Federal Register** on January 2, 1980 (45 FR 342).

ICAO Considerations

As part of this proposal relates to the navigable airspace outside the United States, this notice is submitted in consonance with the International Civil Aviation Organization (ICAO) International Standards and Recommended Practices.

Applicability of International Standards and Recommended Practices by the Air Traffic Service, FAA, in areas outside domestic airspace of the United States is governed by Article 12 of, and Annex 11 to, the Convention on International Civil Aviation, which pertains to the establishment of air navigational facilities and services necessary to promoting the safe, orderly, and expeditious flow of civil air traffic. Their purpose is to insure that civil flying on international air routes is carried out under uniform conditions designed to improve the safety and efficiency of air operations.

The International Standards and Recommended Practices in Annex 11 apply in those parts of the airspace under the jurisdiction of a contracting state, derived from ICAO, wherein air traffic services are provided and also whenever a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting such responsibility may

apply the International Standards and Recommended Practices in a manner consistent with that adopted for airspace under its domestic jurisdiction.

In accordance with Article 3 of the Convention on International Civil Aviation, Chicago, 1944, state aircraft are exempt from the provisions of Annex 11 and its Standards and Recommended Practices. As a contracting state, the United States agreed by Article 3(d) that its state aircraft will be operated in international airspace with due regard for the safety of civil aircraft.

Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator has consulted with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.125 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (45 FR 342) as follows:

V–321 title and text is deleted and "V–321 From Cape Newenham, Alaska, NDB via King Salmon, Alaska; to Homer, Alaska, including a south alternate via the INT of King Salmon 087° and Homer 237° radials." is substituted therefor.

(Secs. 307(a), 313(a), and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348(a), 1354(a), and 1510; Executive Order 10854 (24 FR 9565); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.65)

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation and a comment period of less than 45 days is appropriate.

Issued in Washington, D.C., on March 31, 1980.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80–10157 Filed 4–2–80; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 2

[Docket No. RM80–42]

Tax Normalization for Certain Items Reflecting Timing Differences in the Recognition of Expenses or Revenues for Ratemaking and Income Tax Purposes

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing to issue a rule permitting a public utility or interstate pipeline making a rate filing under section 205 of the Federal Power Act or under sections 4 or 7 of the Natural Gas Act to use tax normalization to compute the income tax component for its cost of service. If the rate applicant were to make such an election it would be required to use tax normalization for all timing difference transactions except those addressed in prior Commission orders. The proposed rule is not intended to modify existing procedures contained in the Commission's Uniform Systems of Accounts.

DATES: Written comments by June 30, 1980. Public hearings (if warranted) to be announced.

ADDRESS: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. Reference Docket No. RM80–42.

FOR FURTHER INFORMATION CONTACT:
Angela Lancaster, Office of the Chairman, Federal Energy Regulatory Commission, Room 9000, 825 North Capitol Street NE., Washington, D.C. 20426 (202) 357–8333.
Ronald L. Rattey, Office of Regulatory Analysis, Federal Energy Regulatory Commission, Room 3000F, 825 North Capitol Street NE., Washington, D.C. 20426 (202) 357–8186.
Jane E. Phillips, Office of the General Counsel, Federal Energy Regulatory Commission, Room 8104B, 825 North Capitol Street NE., Washington, D.C. 20426 (202) 357–8033.

Issued March 31, 1980.

I. Introduction

The Federal Energy Regulatory Commission (Commission)[1] is proposing to amend Part 2 of its regulations by adding a new § 2.202 as a substantive rule applicable to both the electric utility and natural gas pipeline industries. The rule would permit tax normalization, or interperiod tax allocation, with respect to all miscellaneous transactions (other than those specifically excluded as discussed below) that create "timing differences" in the recognition of expenses or revenues for ratemaking (or book) and income tax purposes. In addition, the proposed rule codifies existing Commission practice with regard to the related cost of service effects for the rate base adjustments resulting from the treatment of accumulated deferred income tax accounts.

This Commission's predecessor, the Federal Power Commission, on various occasions considered the issue of normalizing the effects of certain transactions for which timing differences exist. Order No. 530–B, Docket Nos. R–424 and R–446, issued July 6, 1976,[2] represents the culmination of the last generic normalization proceeding before the FPC. That processing, *inter alia*, addressed the ratemaking implications of normalization and modified the provisions of the Uniform Systems of Accounts in order to establish accounting procedures necessary to achieve tax normalization. The instant proceeding has been initiated in response to the February 16, 1979 remand of the Order No. 530 series of the United States Court of Appeals for the District of Columbia Circuit in *Public Systems, et al.* v. *FERC*, 606 F.2d 973 (D.C. Cir. 1979), rehearing denied March 30, 1979.

II. Scope of Proposed Regulation

Although the proposed regulation is relatively broad in scope, certain items are expressly excluded from consideration. It appears neither appropriate nor necessary to re-evaluate the accounting or ratemaking treatment of those timing difference transactions for which normalization has been prescribed in prior proceedings. To the extent that the Commission's treatment of any of the excluded items has been challenged before the courts, the Commission has been sustained in the exercise of its expert judgment. See discussion of legal history, Section V, *infra*. Moreover, because these timing difference transactions were not addressed in Order No. 530 or its progeny, they are beyond the scope of the Order No. 530–B remand.

[1] The term "Commission" refers to the Federal Power Commission (FPC) with respect to actions taken prior to October 1, 1977, and to the Federal Energy Regulatory Commission with respect to any actions on or after that date.

[2] *See also*, Order Nos. 530 and 530–A, issued June 18, 1975, and January 19, 1976, respectively; Order Denying Rehearing of Order No. 530–B, issued September 3, 1976.

Thus, this rulemaking proceeding *does not* relate to previously established Commission policy concerning normalization of the tax effects associated with the following timing differences:[3]

(1) Differences that result from the use of accelerated depreciation and Class Life Asset Depreciation Range (ADR) tax provisions. (Order No. 404, May 15, 1970; Opinion No. 578, June 3, 1970; and Order No. 504, February 11, 1974.)

(2) Differences that result from the use of accelerated amortization provisions on certified defense and pollution control facilities. (Order Nos. 203, May 29, 1958; 204, May 29, 1958; and 432, April 23, 1971.)

(3) Differences that arise from recognition of extraordinary property losses as a current expense for tax purposes but as a deferred and amortized expense for book purposes. (Order No. 504, February 11, 1974.)

(4) Differences that arise from recognition of research, development, and demonstration expenditures as a current expense for tax purposes but as a deferred and amortized expense for book purposes. (Order Nos. 408, August 26, 1970; 504, February 11, 1974; and 566, June 3, 1977.)

(5) Differences that result from different tax and book reporting of deferred gains or losses from disposition of utility plant. (Order No. 505, February 11, 1974.)

(6) Differences that result from the use of the Asset Guideline Class "Repair Allowance" provision of the Internal Revenue Code of 1954. (Order No. 504, February 11, 1974.)

(7) Differences that result from recognition of purchased gas costs as a current expense for tax purposes but as a deferred expense for book purposes. (Order No. 13, October 18, 1978.)

Another matter which the Commission does not propose to reconsider at this time concerns the accounting provisions established in Order No. 530.[4] The rule currently under advisement may properly be viewed as enunciating a ratemaking rather than an accounting rule. The accounting practices previously set forth have been incorporated in the Commission's Uniform Systems of Accounts and were not directly at issue on judicial review. Moreover, the provisions of the Uniform Systems of Accounts relating to income taxes are designed to accommodate Commission ratemaking practices, whether or not normalization is utilized. Therefore, changes in ratemaking practices that permit normalization would not need to be accompanied by changes in the Uniform Systems of Accounts.

Having thus narrowed the scope of this rulemaking, the Commission is proposing a rule that would generalize the application of normalization to all other (miscellaneous) timing difference transactions. Order No. 530, at 6–7, identified seven examples of miscellaneous timing difference transactions that had not been considered in prior Commission proceedings. While that list contains the major additional items that would qualify for normalization under the current proposal, it should not be construed as exhaustive. In fact, the policy of comprehensive normalization sought to be implemented by this proposal would encompass a wide variety of less significant timing difference transactions.[5] *See* Appendix C for additional examples of timing differences.

The proposed rule as well as this preamble attempt to define the term "timing differences" in such a way as to eliminate any confusion concerning the Commission's intent to permit normalization of tax effects associated with all transactions that fit within the definition. Also in this preamble, we distinguish "permanent difference transactions," noting that normalization is inapposite in the case of permanent differences.

The Commission contemplates a uniform application of normalization to the timing difference transactions encompassed by this proposal. Toward that end, the proposed rule requires that a company electing normalization for the tax effects of any of the miscellaneous items must normalize the tax effects of all other miscellaneous timing difference transactions. This condition is necessary because normalization of certain transactions may initially increase revenue requirements, while normalization of others may have an initial rate reducing effect. The same principles support normalization in either case, and we cannot countenance a selective use of normalization which fails to recognize both positive and negative effects on rates.

III. Purposes of Proposed Rule

The primary purposes of this rulemaking proceeding can be summarized succinctly as follows:

(a) To develop a policy that equitably balances the Commission's obligations to ensure reasonable rates for ratepayers while maintaining the financial integrity of the electric and natural gas industries that is necessary for continued reliable service. In establishing such ratemaking policies, it is clear that the Commission must consider a variety of factors. *See, e.g., FPC* v. *Memphis Light, Gas & Water Division, et al.*, 411 U.S. 458, 465–66, 474 (1973). It is also apparent that the Commission has been vested with broad discretion to exercise its expertise in such matters. *See, id.* at 466–67.

(b) To further develop and explain the policy considerations, rationale and cost implications underlying normalization. This proposal addresses, among other matters, the probable impacts of normalization on factors such as cash flow, external financing requirements, cost of capital considerations, price squeeze concerns, rate stability, and overall rate levels. The device by which much of this information is set forth and evaluated is a recently completed staff report incorporated as part of this proposal and attached as Appendix A.

(c) To respond to certain criticisms of Order No. 530–B and the related orders which the Court of Appeals for the District of Columbia Circuit noted in *Public Systems, supra.*

(d) To eliminate an ongoing controversy and attendant uncertainty regarding the appropriate treatment of timing difference transactions in Commission rate proceedings by establishing a generic rule sanctioning normalization. Apart from other considerations, the resulting administrative efficiency and clarity should benefit consumers, regulated utilities, [6] and the Commission. Although an industry-wide determination proscribing normalization might similarly avoid case-specific controversies or eliminate confusion, our inquiry into the subject suggests that normalization more appropriately comports with sound regulatory principles and with the public interest.

[3] With the exception of item number seven, each of these timing difference transactions was specifically eliminated from consideration in Order No. 530, at 5–6.

[4] These provisions were adopted consistent with accounting practices described in Opinion No. 11 of the Accounting Principles Board of the American Institute of Certified Public Accountants, issued December 1967.

[5] As noted in the Staff analysis that accompanies this proposal (Appendix A), certain of these additional transactions may significantly affect individual companies at particular points in time, although it is unlikely that they would substantially affect industry-wide electric or gas prices.

[6] Unless otherwise indicated, "utility" or "company" refer to both natural gas pipelines and public utilities.

IV. Explanation of Normalization and Flow-Through Ratemaking Policies

The computation of allowable income taxes is an integral facet of any cost of service determination. In order to enable a jurisdictional electric utility or natural gas pipeline company to recover its prudently incurred costs and have an opportunity to earn a fair return on the capital that it has invested for the benefit of its consumers, the Commission must concomitantly consider the Federal, state and local taxes which the company will be required to pay on its earnings. Only by allowing the company to recover such taxes from its ratepayers will the company have the opportunity to realize after-tax earnings at a level which has been determined to be just and reasonable.

The issue of interperiod tax allocation is a subset of the broader question of interperiod cost allocation. In the rate setting process, the Commission invariably must address the question of allocating costs between different periods of time. Taxes, like any other cost of doing business, can be recognized in rates currently or they can be recognized earlier or later than the time at which they are actually incurred. In the final analysis, the Commission must determine whether the interperiod allocation of all costs, including taxes, will produce results compatible with statutory standards.

Under the ratemaking policy known as "flow-through," the tax component of a regulated entity's cost of service is computed so as to reflect the incurrence of expenses and the receipt of revenues consistent with the interperiod cost and revenue allocation policies of the Internal Revenue Service (IRS). "Normalization," on the other hand, conforms the cost of service tax allowance with the associated ratemaking treatment of the underlying expenses and revenues.

The distinction between these two approaches becomes clearer by reference to certain disparities between IRS and Commission policies. Both the IRS and the Commission are bound by statute and by policy to consider a variety of public interest issues in the exercise of their respective responsibilities. However, because the concerns governing the actions of this Commission and those of the IRS do not always coincide, the interperiod allocations of costs and revenues may also differ. If the Commission determines that a current utility expense should not be borne entirely or immediately by current ratepayers, the Commission may require a spreading of the expense over some other time period. However, the IRS may permit the company to recognize the total expense and realize an associated tax deduction in the year of incurrence. [7] When taxing and ratemaking policies diverge in such a manner, a "timing difference" arises.

There are four types of transactions that give rise to timing differences:

1. *Expenses* that are recognized for tax filings in periods *prior to* when they are recognized in rates;
2. *Expenses* that are recognized for tax filings in periods *later than* when they are recognized in rates;
3. *Revenues* that are recognized for tax filings in periods *prior to* when they are recognized in rates; and
4. *Revenues* that are recognized for tax filings in periods *later than* when they are recognized in rates.

The first and fourth types reduce tax liability currently and raise it later. The second and third types raise tax liability currently and reduce it later. In order to avoid confusion, the major focus of our discussion will be on the expense types of timing differences. [8]

The alternative policies of flow-through and normalization have both been advanced as methods for determining an appropriate cost of service tax allowance when there are timing differences. Under the flow-through policy, ratepayers are permitted to realize the tax benefits of expenses (lower tax liability) when those expenses are used as tax deductions by a company. In other words, the entire tax benefit arising from the current deductibility of an expense for IRS purposes is immediately flowed through the company's rates (via its tax allowance) to its customers, despite the fact that the company's rates will recover the related expense in some other period. [9]

Normalization, on the other hand, treats taxes on a deferred or prepaid basis depending upon the ratemaking treatment of the associated expenses. Normalization matches the tax effect of an expense with the ratemaking treatment for recovery of that expense. Normalization acknowledges the timing difference created by divergent IRS and ratemaking treatment of expenses and revenues and establishes a tax allowance that is consistent with the ratemaking treatment of the expenses and revenues. The procedure permits the regulated company to defer certain of its tax deductions for ratemaking purposes until such time as the expenses which produced the deductions are recovered in the company's rates. Conversely, where ratemaking permits the recovery of an expense earlier than the time at which it is deducted for tax purposes (e.g., plant removal costs), the normalized tax allowance reflects the deductibility of the expense in advance of the actual deduction. The result, again, is a matching of the Commission's treatment of taxes with its treatment of the underlying expenses.

While there are a number of expense and revenue items which create timing differences, normalization operates in essentially the same manner for each. In determining the tax component of the cost of service, a deferred tax component equal to the tax effects of timing difference transactions deducted currently for income tax purposes is added to actual taxes payable in that period. Concurrently, deferred taxes associated with timing difference transactions recognized in rates currently but deducted in other periods for income tax purposes are subtracted from actual taxes payable in that period. These two adjustments (which relate only to expense transactions) can be aggregated into a single (net) deferred tax component. Similar adjustments would relate to revenue transactions. The use of such deferred tax debits and credits causes rates to be set at levels approximating what they would be if the interperiod cost and revenue allocation policies of the IRS were conformed to those of the Commission.

In addition, the Commission requires that accumulated deferred taxes be deducted from the company's rate base prior to applying the overall rate of return in the cost of service computation. This companion practice is designed to ensure that the company's stockholders do not earn a return from ratepayers on those assets financed with deferred tax funds.

As discussed above, the proposed regulation sanctions normalization only with respect to timing differences, not permanent differences. In order to

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[7] A simple example of this situation is the recovery of regulatory commission expenses. Although these costs are deducted for tax purposes in the year of disbursement, the Commission often requires an amortization of regulatory expenses in order to more nearly establish a representative level for rate purposes. The reverse situation is illustrated with the example of plant removal costs for which the Commission allows recovery over a period of time prior to actual incurrence and deduction for tax purposes.

[8] Repetitive explanations can be avoided since revenues can be viewed as negatives of expenses, and the analysis of revenue transactions parallels that of expense transactions. Furthermore, expense transactions are the most prevalent types of transactions addressed by the policies and potentially have the most significant effects on rates.

[9] As discussed in Section VI, *infra*, the actual result of the flow-through policy is to reduce the income tax allowance and rates by an amount greater than the tax effect of a deducted expense.

comprehend the distinction between timing differences and permanent differences, it is necessary to recognize two fundamental characteristics of individual timing differences: (1) the difference between recognition of a transaction for tax purposes and for ratemaking purposes arises in one time period and reverses direction or "turns around" in one or more other periods; and (2) over the life of the transaction (before and after the reversal) the total amounts recognized for tax purposes and for ratemaking purposes are equal. In contrast, permanent differences are not offset by reversals in other periods. Rather, they arise when a different dollar value (including nonrecognition of the transaction) is placed on a particular expense or revenue transaction by the IRS than by the regulatory commission. The result is that the total expense deduction or revenue addition taken for tax purposes over time differs from that recognized in ratemaking.[10] Because no interperiod cost or revenue allocation problem exists in the case of permanent differences, normalization is inappropraite for those transactions.

A final important concept relating to the issue of timing differences and interperiod tax allocation is that of "continual tax deferral." This is associated with the composite effects over time of a combination of timing differences affecting a company. A "continual tax deferral" arises when, over time, the total tax benefit associated with new timing differences equals or exceeds the total value of the reversals occurring from earlier timing differences.[11] As a result, under a normalization policy, a positive balance of accumulated deferred taxes reflecting the collection of more taxes in rates than have been paid by the company could exist into the foreseeable future.

Continual tax deferrals are often referred to by the misnomer "permanent tax savings." This term has the connotation that taxes are not only deferred but are also somehow permanently forgiven. This is inaccurate. Regardless of the number of individual timing differences affecting a given utility, each such timing difference will reverse so that, over the life of the transaction, the total amount of the transaction recognized for ratemaking will equal the total amount recognized for tax purposes. Deferred taxes associated with each timing difference are, in fact, recognized when revenues associated with the transaction are recovered, whether or not the reversals of initial timing differences are replaced by new timing differences of the same or larger magnitude. In addition, as discussed previously, some timing differences (such as those associated with plant removal costs) operate in an opposite manner, so that normalization recognizes tax deductions in the cost of service in advance of IRS recognition of those deductions. Reductions to the accumulated deferred tax accounts associated with this type of timing difference offset, at least in part, the deferred taxes arising from other timing differences. Moreover, and perhaps of greater significance, is the fact that there cannot be a permanence in the deferral of taxes unless there is, concomitantly, a permanence in the deferred recovery of the associated costs. As the staff study notes (Appendix A, Section II.C.), with a tax rate of approximately 50 percent, the associated deferred costs are twice as large as the deferred taxes. It is inconsistent to call continually deferred taxes "permanent tax savings" which should be flowed through to ratepayers and at the same time to maintain rates that continually defer the recovery of the much larger associated expenses.

V. History of the Issue and Standards for Implementation of Commission Policy

In *FPC* v. *Hope Natural Gas Company*, 320 U.S. 591 (1944), the Supreme Court held that there are two aspects of the Commission's authority to assure just and reasonable rates:

1. "To protect consumers against exploitation * * *"[12]

2. To promote the financial interests of the natural gas companies (and, by inference, electric utilities) as measured, not only by revenues sufficient to recover operating expenses and capital costs but also by revenues "* * * sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain credit and to attract capital."[13]

In determining the justness and reasonableness of rates, the Commission utilizes its expertise in selecting from a variety of ratemaking approaches. *FPC* v. *Natural Gas Pipeline Company*, 315 U.S. 575, 586 (1942); *Alabama Tennessee Natural Gas Company* v. *FPC*, 359 F.2d 318, 331 (1966). As discussed below, various courts, including the United States Supreme Court, have recognized the Commission's broad discretion to allow either flow-through or normalization of the tax effects of timing differences. We are unaware of any court decision expressly requiring the Commission to adopt either flow-through or normalization on the basis of any particular factor.

When the FPC first allowed normalization of the tax effects of accelerated depreciation, the United States Court of Appeals upheld the Commission, deferring to the Commission's expertise in the area.[14] Shortly thereafter, when the Commission decided to allow a 1.5 percent rate of return on accumulated deferred taxes, an appellate court upheld the Commission's decision and held that the Commission's discretion was not constrained:

> Since these evaluations are in the expert competence of the Commission, we do not disturb the conclusion derived from them.[15]

In the *Alabama-Tennessee* case,[16] a subsequent Commission (in a three-to-two decision) decided to require the use of flow-through with accelerated depreciation instead of permitting normalization as a previous Commission had done. The Commission relied principally on the "tax deferral"/"tax savings" distinction, finding that normalization would produce "tax savings" for a company's composite plant assuming that plant would remain stable or grow. On appeal, the Commission was affirmed on the basis that there was substantial evidence to support this finding.[17] The appellate court noted that the problem was in a special field that required a regulatory agency's expertise [18] and that the reasonableness of the entire rate structure (not the mechanics used to arrive at the rate structure) was the important issue.[19] Further, the court stated that:

> The Commission must, of course, concern itself with the possibility of having misread the future and with the future's taking a turn without benefit of advice from the Commission. All things change. But we should expect agency policy to be sufficiently flexible to attempt to change with changing times.[20]

A later Commission voted to permit normalization of the tax effects of accelerated depreciation of certain vintage property in *Texas Gas*

[10] As discussed in Appendix A, Section II.A., examples of permanent differences include municipal bond interest and political contributions.

[11] This relates to timing differences arising from expenses that are recognized as tax deductions prior to their collection in rates. For logical completeness there should also be a term, such as "continual tax prepayments," to relate to expenses recognized as tax deductions after they are recovered in rates.

[12] 320 U.S. at 610.

[13] *Id.* at 603.

[14] *City of Lexington, Ky., et al.* v. *FPC*, 295 F.2d 109, 114 (4th Cir. 1961).

[15] *Panhandle Eastern Pipeline Company* v. *FPC*, 316 F.2d 659, 663 (D.C. Cir. 1962).

[16] Opinion No. 417, 31 FPC 208 (Feb. 3, 1964); Opinion No. 417, 31 FPC 928 (April 15, 1964).

[17] *Alabama Tennessee Natural Gas Company* v. *FPC*, 359 F.2d 318 (5th Cir. 1966).

[18] *Id.* at 330.

[19] *Id.* at 331.

[20] *Id.* at 339.

Transmission Corporation,[21] again reversing the position of a prior Commission. The primary ground for its decision was that "there is little chance with respect to this plant that there will be any permanent tax savings." [22] The United States Court of Appeals for the District of Columbia Circuit reversed the Commission's opinion in *Texas Gas,*[23] and the Commission appealed that reversal to the United States Supreme Court. In *FPC* v. *Memphis Light, Gas & Water Division,* 411 U.S. 458 (1973), the Court reversed and remanded the decision of the District of Columbia Circuit and held that the Federal Power Commission in *Texas Gas* had correctly decided that it had—

> The authority to determine whether on particular facts the abandonment of flow-through by a utility within the parameter of the Tax Reform Act of 1969 would be in the public interest as envisaged by the Natural Gas Act, even though it might increase rates.[24]

On remand, the District of Columbia Circuit noted this Supreme Court finding [25] and, on the merits, affirmed the Commission's approval of normalization of the tax effects of accelerated depreciation in the utility's cost of service.[26]

The 530 Series of Orders

In 1975, the Commission issued Order No. 530. The order dealt with the tax effects of certain timing differences that had not been covered by previous Commission orders or opinions. The order promulgated accounting amendments relating to normalization and announced a general ratemaking policy in favor of normalization. With respect to the timing differences covered by the rulemaking, Order No. 530 contemplated that the normalization issue would be decided in individual rate cases. Although the Commission stated that parties to a rate proceeding should make an appropriate factual showing to sustain their claims or counterclaims, it did not specify the nature of the factual showings required. In support of its normalization policy the Commission cited the need of both natural gas companies and electric utilities to attract captial, and the tendency of normalization to increase cash flow, reduce external financing requirements, contribute to financial stability and improve fixed charge coverages.

On rehearing, the Commission stated that the courts had required it to find a "tax deferral" rather than a "permanent tax savings" before it could allow normalization.[27] Order No. 530–A therefore required that, in each individual rate case, a "tax deferral" rather than a "tax savings" would have to be proved by the utility with respect to a class of items before that class could qualify for normalization.

In Order No. 530–B, the Commission reassessed the issue. It determined that while the courts had typically dealt with the normalization/flow-through question in terms of the Commission's own standard of deferral versus savings, they had never held that this distinction required the Commission to adopt either flow-through or normalization. According to the Commission, the only bar to the adoption of normalization was if the particular transaction would cause a permanent difference rather than a timing difference. In view of its freedom to choose between competing accounting methods, and based on the record in Docket Nos. R–424 and R–446 and the policy considerations enunciated in both Order Nos. 530 and 530–B, the Commission ultimately adopted a ratemaking policy permitting normalization of the tax effects of all timing differences between the treatment of items for tax and book purposes. The Commission decided that normalization should be allowed even when accumulated deferred tax balances would grow or remain constant. The Commission also continued the policy of deducting accumulated deferred taxes from rate base.

On petition for review of the 530 series of orders to the District of Columbia Circuit,[28] petitioners contended that the Commission failed to provide a reasonable basis for its action and improperly neglected the anticompetitive consequences of its normalization policy. The court concentrated only on Order No. 530–B. The court held that section 19(b) of the Natural Gas Act imposed the "substantial evidence" standard on informal rulemakings, as well as adjudicatory proceedings.[29] It stated that the Commission's order should "include a reasoned opinion detailing those factual elements in the record that underlie the Commission's actions." [30] Noting that Order No. 530–B "rest[ed] on general policy considerations," [31] the court concluded that the Commission failed to "assess the consequences of its action for the industry" or to "indicate 'fully and carefully' the purposes behind the order." [32]

In its decision the court discussed in detail its view of the areas in which Order No. 530–B failed to meet the appropriate standards:

1. There was no indication of the impact on consumers or utilities of adopting normalization and no statement as to the financial resources at issue.[33]

2. The orders did not specify all of the expenses that would be covered by normalization, giving seven examples instead.

3. Only three of the seven examples were discussed adequately (interest, pension costs, and taxes incurred during construction). The other items received such summary treatment that the court considered the order to contain an "insufficient explanation of the Commission's position for effective review." [34]

4. As to both the items discussed and those that received summary treatment, there was nothing to support the Commission's implicit conclusion that there would be no "tax savings." [35] (The court apparently equated "tax savings" with growing or constant balances in accumulated deferred taxes.)

5. The order failed to explain the goals of the Commission's policy.[36] The only policy goals mentioned by the order would apply to a generic flow-through

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[21] Opinion No. 578, 43 FPC 824 (June 3, 1970); Opinion No. 578–A, 44 FPC 140 (July 21, 1970).

[22] 43 FPC at 829.

[23] *Memphis Light, Gas & Water Division* v. *FPC,* 462 F. 2d 853 (1972).

[24] 411 U.S. at 472–73.

[25] *Memphis Light, Gas & Water Division* v. *FPC,* 500 F. 2d 798, 807 (1974).

[26] *Id.*

[27] Order No. 530–A, Order Denying Applications for Rehearing and Clarifying Prior Orders, issued January 19, 1976.

[28] *Public Systems, et al.* v. *FERC,* 606 F.2d 973 (D.C. Cir. 1979).

[29] There is presently a conflict between the United States Circuit Courts of Appeal over the specific question of whether the "substantial evidence" test or the "arbitrary and capricious" standard applies to judicial review of rulemakings under the Natural Gas Act. *Compare Superior Oil Company* v. *FPC,* 563 F.2d 191 (5th Cir. 1977) with *Public Systems, et al.* v. *FERC,* 606 F.2d at 973. The dissent in *Public Systems* argued that the substantial evidence standard should not apply to informal rulemaking. The dissenting Judge would have applied the "arbitrary, capricious, [or] abuse of discretion" standard of the Administrative Procedures Act and would have upheld Order No. 530–B. (606 F.2d at 983, Judge Robb dissenting.) However, several courts have indicated that the "arbitrary and capricious" test and the "substantial evidence" test may not, in practical effect, impose a different standard of review for informal rulemakings. *See ECEE* v. *FERC,* No. 79–1171, —— F.2d —— (5th Cir. February 7, 1980, Slip op. at 3019–20, n. 22); *American Public Gas Association* v. *FPC* 567 F.2d 1016, 1028–29 (D.C. Cir. 1977); *Associated Indus. of N.Y. State, Inc.* v. *U.S. Department of Labor,* 487, F.2d 342, 349–50 (2d Cir. 1973).

[30] 606 F.2d at 979.

[31] *Id.* at 980.

[32] *Id.*

[33] *Id.* at 980–81.

[34] *Id.* at 981.

[35] *Id.*

[36] *Id.*

policy as well as to a normalization policy.

6. No reason or rationale was given for the Commission's decision to decide the price squeeze implications of normalization on a case-by-case basis.

The court remanded Order No. 530–B to the Commission for further action not inconsistent with the court's opinion.

In order to alleviate the uncertainty among presiding law judges and litigants concerning the procedure to be followed in the wake of *Public Systems*, the Commission issued an Order Establishing Interim Procedures in Docket Nos. R–424 and R–446.[37] The Commission stated that the procedures set forth in Order No. 530–B would remain in effect pending further action on the court's remand. There was only one exception to this policy. If the filing utility submitted evidence on the normalization issue, staff and intervenors would be allowed to submit evidence and engage in cross-examination on the issue. Further, the Commission declared that.

> Any final decision which requires a refund of amounts otherwise in excess of the just and reasonable rate level shall not require a refund of that portion of the rate related to interperiod tax allocation. That portion shall continue in effect, subject to refund, pending a final order in these dockets.

The proposed rule reflects the Commission's effort to follow a course that is consistent with legal precedent, including *Public Systems*, as well as with the Commission's own standards for the implementation of ratemaking policy. The Commission has broad discretion in the determination of the appropriate tax treatment for the cost of service of electric utilities and natural gas pipelines. The Commission also possesses the flexibility to employ a procedure, like the informal rulemaking procedure chosen here, that it believes is best suited to effective resolution of the issue of interperiod tax allocation. *See Vermont Yankee Nuclear Power Corporation* v. *Natural Resources Defense Council*, 435 U.S. 519 (1978). Moreover, the Commission has the option of adopting either flow-through or normalization as long as it sufficiently articulates the policy reasons behind the decision and provides support for the factual underpinnings of those policy reasons.

VI. Policy Considerations

Analysis of the Issue

As a general matter, the rationale underlying tax normalization is different from the rationale underlying flow-through. As discussed in an earlier section, this difference between the two policies is most easily seen with an expense that creates a tax deferral.

Under normalization, the tax effect of an expense is recognized in the cost of service in the same time period as the expense itself is recognized in the cost of service. This is the matching principle that is discussed more fully in Section II.A. of the staff study (Appendix A). Taxes are deferred under normalization when the collection of the expense in rates is deferred. The goal of this matching is to achieve equity, or to ensure fairness,[38] by allocating the tax benefit of an expense to the same customers that pay the expense. To do otherwise would permit subsidization of present consumers by future consumers who would be denied the tax benefit associated with the expense at the time that the expense is recovered in their rates.

Underlying the equity argument is the concept of "used and useful" property. Usually, the determination that a piece of equipment or property can be included in rate base rests on whether that equipment is "used and useful" in providing service to existing ratepayers.[39] If current customers are receiving a service from the equipment or property, it is reasonable to require them to pay for the use of this property. The next step is a logical one. If current customers are paying the expenses associated with a given piece of equipment or property, because they are receiving service from it, they also should be receiving the benefits of the tax deductions arising from the associated expenses. Not only is it fair to match the overall use of equipment or property with payment for that use but also it is fair to match the *tax* benefits of expenses for equipment or property with the expenses themselves.

Conversely, if customers are not receiving service from property or equipment because it is not yet "used and useful," the customers should not be charged for the expenses associated with that property or equipment. Since the expenses are incurred currently but cannot be recovered in rates until some time in the future, it is reasonable to withhold from the rate calculation the tax benefit (deduction) associated with those as yet unrecovered expenses. Moreover, the utility must finance the expenses in some manner. By temporarily allowing the utility to realize the current tax benefit, the burden of financing the expenses is lessened. Customers, in effect, provide some of the financing by way of the deferred taxes included in their rates. At the time that the expenses are eventually recovered in rates, the tax benefit of the expenses is also reflected in rates so that the utility "pays back" the tax benefit to the customers at the time the customers are charged the expenses themselves.[40]

The rationale underlying flow-through, on the other hand, is that customers should not be charged more taxes in any one year that the utility actually pays in taxes during that year. The cost of service tax allowance should match the IRS determined tax liability as closely as possible. This is referred to as the "actual taxes paid" doctrine, a theory often invoked to demonstrate that flow-through is cost-based.

The proposed normalization policy is also cost-based but not in the same manner as the flow-through policy. Normalization does not give special treatment to taxes. Under normalization, taxes are allocated over time on a prepayment or deferral basis in a manner similar to other costs. The fact that other costs are not, as a general rule, allocated on an "as paid" basis does not mean that the ratemaking cost of service is not cost-based. Similarly, the fact that normalization does not allocate taxes on an "as paid" basis does not mean that normalization is not

[37] Issued June 8, 1979.

[38] A finding that rates are fair necessitates a proper balancing of the relative claims of the interested parties in a rate proceeding. The determination of fair or equitable rates must be, by its very nature, within the judgment and discretion of the Commission. The courts have recognized the Commission's "recourse to equitable concepts in striving for the reasonableness that broadly identifies the ambit of sound discretion," *City of Chicago* v. *FPC*, 385 F.2d 629, 642 (1967), and the fact that "conceptions of equity . . . may properly be invoked by administrative agencies seeking to achieve 'the necessities of control in an increasingly complex society without sacrifice of fundamental principles of fairness and justice.' " *Id.* at 642–43, *citing Niagara Mohawk Power Corporation* v. *FPC*, 379 F.2d 153, 160 (1967).

[39] The "used and useful" concept is consistent with the Commission's disallowance of construction work in progress (CWIP) in rate base. Nevertheless, in late 1974, when the Commission proposed a rulemaking to include CWIP in rate base because of the severe financial pressure facing the electric utility industry and the extensive construction programs in progress, the Commission, in effect, was proposing to put aside the matching and equity principles. As financial circumstances eased somewhat, the Commission reiterated its policy of AFUDC capitalization rather than inclusion of CWIP in rate base. However, exceptions were made for pollution control and fuel conversion facilities since the incentive given utilities by CWIP inclusion to pursue pollution control and fuel conversion were necessary to meet national goals of greater importance than the regulatory matching and equity principles enunciated here.

[40] An analogy can be drawn between this result and an involuntary "loan" provided by customers to the utility in the form of deferred taxes. Customers are compensated for the "loan" in the form of reduced rates resulting from rate base deduction of accumulated deferred taxes. This analogy is discussed in Appendix A, Section II.B.1.

cost-based. It simply means that taxes, like other costs, may be more properly chargeable to periods other than the periods during which the taxes are actually paid by the utility. Further, just as one can say that the allowance for other costs properly covers the actual expenditures made by a utility over time and no more, so too can one say that the tax allowance, under normalization, covers actual taxes over time and no more. Since there is no inherent difference between tax expenses and other expenses, the Commission believes that it is inconsistent to treat them differently, as the flow-through policy does. In addition, because flow-through allocates the tax benefits of expenses to different periods from those periods to which the expenses themselves are allocated, there is a resulting mismatch that creates inequitable results.

A flow-through policy would distort the Commission's pricing objectives in instances in which the Commission determines that the related expense should be recovered in a different time period. As discussed earlier, the Commission must decide for cost allocation purposes whether an expense should be recovered in rates in the same period, after, or before it is incurred by the utility. For instance, if the Commission has determined that a reasonable allocation for the recovery of a $100 expense incurred in year 1 is $50 in each of years 2 and 3, then rates in year 1 should be unchanged and rates in years 2 and 3 should be increased by $50. This is essentially what occurs under a normalization poilicy. A flow-through tax policy, however, produces a very different result. Because income received in the form of a tax allowance represents additional taxable revenues, rates under a flow-through policy actually would be reduced in year 1 by $100 and increased by $100 in each of years 2 and 3.[41]

An advantage of normalization is that, other things being equal, revenue swings between time periods are likely to be more moderate than under flow-through. Thus, a Commission policy objective of revenue stability can be furthered with the adoption of normalization. The tendency toward stability is demonstrated by the staff study in its discussion of the single transaction case (Appendix A, Section II.B.). As the prior example demonstrated, flow-through lowers rates during the construction period below the rate level that would be required absent construction—but by more than the amount of the tax benefit itself—and raises rates during the operating life of the plant—but by more than the expense recovery. Normalization, on the other hand, affects rates during the construction period only slightly, if at all.

The Commission must often balance the benefits of short-term rate reductions to consumers against the longer term effects of its policies on costs and reliability of service. As indicated by the staff study (Appendix A, Sections II.B.2. and II.D.), normalization produces beneficial effects on cash flow and on the costs of obtaining financial capital. Normalization tends to improve a utility's internal cash flow when the need is greatest and to decrease it when the need it less. Generally, a utility using normalization realizes and is allowed to retain the tax benefits of an expense in the year in which the utility incurs the expense. This lessens the impact of the expense on the utility's cash flow. Conversely, when the expense is recognized and collected in rates and the utility has no actual liability, normalization reduces the amount of the expense actually allowed to be collected by reducing rates to reflect the pass-through of the associated tax benefits to consumers.

Using AFUDC interest as an example, this means that when a utility must expend $100 for this expense, normalization provides $50 of deferred tax debits in rates (assuming a 50 percent tax rate) so that the net impact on the utility's cash out-flow is only $50. When a utility is permitted $100 in rates during a given period to reflect AFUDC interest that it has paid in some prior period(s), normalization reduces the tax allowance by $50 in deferred tax credits so that the net impact on the utility's cash in-flow is only $50.

The financial stability resulting from these effects on cash flow should tend to lower the risks associated with utility investments and thus the costs of capital (*see*, Appendix A, Section II.D.). Further, to the extent that investors view frequent trips to the capital markets as a sign of increased risk, utilities that normalize would be viewed as less risky than flow-through utilities since normalizing utilities, other things being equal, would have lower external capital needs. This also tends to explain the observed lower capital costs to utilities using normalization (*see*, Appendix A, Section II.D.). Since all other costs of service are the same, this lower capital cost means that normalization, over the long-term, should tend to lower the cost of serving customers below flow-through. The lower capital costs and improved cash flow, over time, should also aid a utility in attracting capital and enable a utility to replace and maintain equipment to prevent service deterioration.

In summary, the Commission has proposed tax normalization for the timing differences covered in this proceeding as a matter of general ratemaking policy because it believes that the broad regulatory goals of equitable treatment of ratepayers and investors, long-term cost minimization consistent with service reliability, and cost-based rates can be achieved most successfully by adopting this tax treatment method. In addition, the Commission has reviewed the results of the staff study to determine the industry-wide implications on rates of its proposed rule.

Implications of staff's rate impact analysis

The results of the attached staff impact analysis are important in a number of respects. In addition to providing some indication of the relative magnitude of the impact that the proposed rule has on rates, the staff study provides useful information on some of the issues underlying normalization that are most controversial. For example, various parties opposing the implementation of normalization express concern (explicitly or implicitly) that "continual tax deferrals" necessarily result in continually higher electric or natural gas rates. The staff study demonstrates that this is not necessarily the case since normalized rates may fall below flow-through rates even in the presence of "continual tax deferrals." (*See*, Appendix A and discussion, *infra*.)

Staff's quantitative evaluation covered the types of timing differences addressed in the proposed regulation that, for the majority of the individual utilities, can be expected to have the largest impacts on rates. They are:

1. Differences that result from recognition of the following items as current expenses for tax purposes and as capitalized and amortized expenses for ratemaking purposes:
   (a) The interest component of the Allowance for Funds Used During Construction (AFUDC);
   (b) Construction-related pensions; and
   (c) Construction-related taxes.
2. Differences that result from the use of different depreciation lives for taxes and ratemaking.
3. Differences that result from recognition of regulatory commission cost as a current expense for tax purposes and as an expense amortized over a number of years for ratemaking.

In addition, the study discusses, but does not attempt to quantify, the impact

[41] For a more complete explanation of this result, *see* Appendix A, Section II.B.1.

on rates of applying normalization to "plant removal (or dismantling) costs."[42] The largest impacts arising from this latter item would be for electric utilities with nuclear generating plants and for natural gas pipeline companies with significant offshore facilities. However, with respect to nuclear plants, the appropriate method for decommissioning remains uncertain and the costs associated with the various methods can vary by a factor of ten (*see*, Appendix A, Section III.A.4.). Therefore, any assessment of the effects on rates or normalizing this item would be very speculative.

While there are numerous other items that create timing differences that would qualify for normalization under the proposed rule, they are believed to be relatively insignificant in comparison to the items that were specifically addressed.[43] Nevertheless, the commission is asking responding parties to supply additional estimates of the effects on rates of permitting normalization for any items that the parties believe to cause timing differences. (*See, Comment Procedure*, Section IX, *infra.*)

With respect to the items listed above for which the staff study did quantify impacts, assuming no difference in the cost of capital for flow-through and normalization, the results indicate that electric utility rates, on average, would have risen 3.3 percent and gas pipeline rates 0.2 percent over flow-through rates in 1976[44] had a utility switched from a flow-through policy to a normalization policy. (*See*, Appendix A, Section III.A.3.) For 1980, the maximum impacts are estimated to be about 2.2 percent for electric utilities and 0.1 percent for gas pipelines. These impacts are generally projected to diminish over the next 20 years, with normalized gas pipeline rates falling below flow-through rates during this time span. In the year 2000, normalized rates are projected to be less than flow-through rates in the natural gas pipeline industry and to be a maximum of about 0.9 percent above flow-through rates in the electric utility industry. This differential for electric utilities continues past the year 2000.

The actual dollar impacts (in constant 1980 dollars)[45] of normalization versus flow-through also are set forth in the staff analysis for the base and life depreciation timing differences (items 1 and 2 listed above).[46] In 1976, jurisdictional required revenues for the gas pipeline industry would have been $26 to $32 million higher (depending on the assumed growth rate) under normalization than under flow-through if all pipelines had switched to normalization of the base and life differences. By 1980, the jurisdictional required revenues are estimated to be $18 to $20 million higher under normalization and to be $4 to $6 million higher by 1990. By the year 2000, jurisdictional required revenues for gas pipelines are projected to be $5 to $10 million *less* under normalization than under flow-through. After the year 2000, the trend of lower revenues under normalization increases.

For electric utilities, jurisdictional required revenues would have been $183 to $234 million higher (depending on the growth rates and still in constant 1980 dollars) in 1976 if utilities had switched to normalization from flow-through for the base and life differences. In 1980, the jurisdictional required revenues would be $149 to $183 million higher under normalization than under flow-through, and by the year 2000, normalization rates would be $58 to $148 million higher than flow-through rates. While the highest estimated dollar impact of $234 million in 1976 appears large, as noted earlier it represents only a little over 3 percent differential between normalized and flow-through rates. For the high growth case of 14 percent, the staff analysis projects total (jurisdictional and non-jurisdictional) electric utility revenues to be $85 billion in 1980, of which approximately 10 percent represents jurisdictional revenues.

These projections should be qualified. The assumptions as to growth rates and capital cost, which are highly dependent on inflation rates, must be taken with an increasing degree of skepticism as the projections are taken further into the future.[47] In addition, the above conclusions do not incorporate the differential between the overall cost of capital for normalized firms and for flow-through firms, even though there is evidence that such a differential exists (*see*, Appendix A, Section II.D.). When the staff analysis considers the effects of a minor cost of capital differential, that is, flow-through firms face slightly higher costs of capital than firms that normalize, use of normalization eventually results in electric utility rates lower than under flow-through. In the low-growth case, with a ten basis point differential, normalized rates would drop below flow-through rates in the year 2005. A 30-basis point or more differential would yield a lower average rate under normalization by the year 1990 for the low-growth case. (*See*, Attachment A, Section III.A.3.)

With respect to the high-growth case for electric utilities, normalized rates would fall below flow-through rates by the year 2000 if a 30-basis point or more differential is assumed. With a 40 to 50-basis point differential in the high-growth case, normalized rates would be lower than flow-through rates by the year 1990. (*See*, Attachment A, Section III.A.3.) Nevertheless, even if the cost of capital differential is ignored and the higher indicated rates for normalization in fact occur through or beyond the year 2000, this would not be a reason *per se* to disallow tax normalization. (*See*, discussion of equity, *supra.*)

The Commission does not believe that the other timing difference items covered by the proposed rule would substantially affect the quantitative results. Taken alone, plant removal cost, which is probably the most significant item that was not quantified, could conceivably lower normalized rates as compared to flow-through rates for electric companies with significant nuclear generation capacity and for natural gas pipelines with offshore facilities. However, on an industry-wide, average price basis, the probable effect

[42] This item is a different type of expense item than the interest portion of AFUDC and is prepaid rather than deferred. Tax normalization would at least initially lower rates below flow-through rates for this type of timing difference. (*See*, Appendix A, Section III.A.4.)

[43] Other items not addressed also tend to be of differing magnitudes between firms and overtime. Additional items are listed in Appendix C. The Commission believes that the definition of timing differences in the proposed rule is specific enough so that parties to rate proceedings can readily identify those revenue and expense items that create timing differences for which tax normalization would be permitted. Accordingly, it is unnecessary to specify every single revenue and expense item that might give rise to a timing difference.

[44] The year 1976 was the first year during which utilities had the option of adopting normalization for these items.

[45] The 1980 constant dollar base is derived from data for 1976 inflated by the assumed inflation rates used in the individual cases.

[46] *See*, Appendix A, Section III.A.3. and 4. for a more detailed discussion of the base and life difference dollar impacts for the two industries.

[47] The growth rates set forth in the staff study represent current estimates, and, for the past several years, the estimates of future growth rates in the electric power business have been declining. There is every expectation that, to the extent the estimates are revised over the next few years, these revisions are likely to be in a downward direction. In addition, there is a growing practice on the part of electric utilities of sharing the cost of bulk power supply facilities (such as generating units, parts of generating units or specific transmission facilities) with non-jurisdictional systems previously served at wholesale for resale. To the extent this trend continues, the rate of growth in plant investment of jurisdictional electric utilities will be further reduced. Finally, the cogeneration and small power production program set forth in Sections 201 and 210 of the Public Utility Regulatory Policies Act (PURPA) contains provisions designed to encourage investment in generating facilities by non-jurisdictional entities in lieu of generation by jurisdictional electric utilities. This should have a further depressing effect on the growth rate of plant investment by jurisdictional electric utilities.

is uncertain. Finally, while the overall impact of the other items may be presumed to increase normalized rates as compared to flow-through rates, at least over the short term, the sporadic occurrence of these items mitigates the possibility that these items will have any significant long-term effect on rates.[48]

As we indicated above, staff's statistical results have significance beyond what they indicate will be the impact of the proposed rule on rates. They also show that, under the most plausible future conditions for both gas pipelines and electric utilities, "continual tax deferrals," as defined *supra*, will exist. Whether or not continual tax deferrals exist has been the primary concern of opponents of normalization. Staff's empirical results as well as its analysis of this issue demonstrate that this concern is misdirected and overstated.

First, staff's study shows that, even in the presence of "continual tax deferrals," normalized rates may fall below flow-through rates. This occurs in both the low and high growth cases for natural gas pipelines.[49] The reason for this occurrence is found in the Commission's policy of deducting accumulated deferred taxes from rate base. Over time, as the tax allowance exceeds taxes payable because of deferred taxes, accumulated deferred taxes continue to grow. This, in turn, increases the rate base deduction and lowers the return and tax allowance in the utility's cost of service. For the range of future growth conditions projected in the staff study for the natural gas pipeline industry, the deduction is enough to eventually bring normalized rates below flow-through rates. For the base differences (including the AFUDC interest expense) that the study models, normalized rates fall below flow-through rates in 1990 for both the low and high growth cases. For the life differences, normalized rates drop below flow-through rates in 1998 under both low and high growth assumptions. Even though the normalized rates are lower, there continue to be tax deferrals. Thus, there is no direct relationship between "continual tax deferrals" and higher rates under normalization than under flow-through.

Second, the staff study explains that as long as there is a "continual tax deferral," there is an associated continual (non-tax) cost that the utility cannot yet recover from its customers ("continual non-tax cost deferral"). Furthermore, this "continual non-tax cost deferral," which is financed by investors, is twice as large as the associated "continual tax deferral" (assuming a tax rate of 50 percent). Thus if consumers are concerned about a "continual tax deferral," investors should be doubly concerned about the associated "continual cost deferral."

Of course, it should be emphasized that for each individual expense transaction, cost recovery initially deferred is later permitted, and similarly, taxes deferred are later recognized as an offset to the tax allowance. From this perspective, there is neither a continual cost deferral nor a continual tax deferral.

The comparison between the deferred taxes and the associated deferred costs is also important with regard to the cash flow effects of normalization. As discussed above, an important conclusion of the staff study is that normalization improves the cash flow situation of utilities. In terms of those non-tax costs that are continually deferred, and assuming a 50 percent tax rate, this means that half of those costs are paid for with the additional cash provided to utilities by deferred taxes. In other words, the net drain on the utility's cash flow of the continual cost deferral is essentially halved by allowing utilities to normalize.

A final point with respect to the "continual tax deferral" concern is that utility profits are not higher as a result of deferred taxes. Even if the tax allowance under normalization exceeds the "actual taxes paid," the rate of return realized by shareholders is not increased above that allowed by the Commission. The deferred taxes work, simply, to reduce the investment that must be made in the utility with debt and equity funds from investors. The deferred taxes that are deducted from rate base are effectively treated as a form of ratepayer investment on which ratepayers are compensated (on a tax-free basis) through reduced rates. (*See*, Appendix A, Section II.B.1.)

Conclusion

In summary, evaluation of the relative merits of the two policies leads the Commission to conclude that the normalization policy better achieves the goals of the Commission. While both policies result in rates that are cost-based, the normalization policy more equitably balances the interests of present and future ratepayers by matching the interperiod allocation of tax benefits to the interperiod recovery of expenses. Normalization also achieves this objective by improving utilities' ability to attract capital and maintain cash flow and thereby to provide adequate service reliability over the long term. Normalization does not permit stockholders to realize rates of return higher than those allowed.

Flow-through, while resulting in lower rates, at least initially, imposes higher capital costs for which consumers will be responsible now and in the future. Flow-through cost allocation procedures also distort the Commission's pricing policies and result in rates that are less stable than under normalization.

For the above-stated policy reasons, and after reviewing the estimated effects on the industries and their customers, the Commission is proposing regulations that would permit utilities to use tax normalization for the timing differences identified in the proposed rule.

VII. Relationship Between Normalization and the Potential for Discriminatory Effects

We turn now to a consideration of the most appropriate way in whcih to evaluate any potential for discriminatory effects associated with our proposed normalization rule. The court in *Public Systems, supra,* expressed concern that a disparity between the normalization policies adopted by this Commission vis-a-vis those of state regulatory agencies might subject certain wholesale customers to "price squeezes." The Commission certainly is aware of this possibility and, indeed, it has been acknowledged as a potential area of inquiry.[50] However, for the following reasons we believe that a case-by-case evaluation of price squeeze issues in electric rate cases is the most soundly-conceived administrative practice. Accordingly, the Commission proposes to utilize such an approach in conjunction with the proposed normalization rule.

Price squeeze allegations are *raised* on a case-by-case basis and Section 2.17 of the Commission's regulations provides a mechanism for framing price squeeze issues in individual cases.[51] The Commission is not persuaded that any single ratemaking principle necessarily creates or eliminates the possibility of a price squeeze situation in all cases. The primary elements of a price squeeze—

[48] In this regard we note that the court in *Public Systems* recognized that "precise quantification of all elements of proposed Commission action is not required." (606 F.2d at 981.)

[49] This is also true for electric utilities, assuming a relatively small cost of capital differential. For an expanded discussion of the quantitative results for electric utilities, *see*, Appendix A, Section III.A.3.

[50] *See, e.g.*, Order Denying Rehearing of Order No. 530–B, issued September 3, 1976, at 3.

[51] The Commission's Notice of Proposed Rulemaking in Docket No. RM79–79, issued November 19, 1979, would revise the procedures for consideration of the price squeeze issue in each case in which it is alleged.

non-cost-justified disparity between relevant wholesale and retail rates and resulting anticompetitive effect—may be shown to exist or not to exist only by reference to all of the circumstances extant in a particular rate proceeding. Moreover, even upon a convincing demonstration that a price squeeze exists, the available remedies may differ depending upon the facts adduced in a given case. In *FPC* v. *Conway Corporation*, 426 U.S. 271, 279–80 (1976), the Supreme Court made clear that fashioning an appropriate remedy for price squeeze requires "an examination of the entire 'factual context in which the proposed wholesale rate will function'." (*Citing Conway Corporation* v. *FPC*, 510 F.2d 1264, 1273 (D.C. Cir. 1975).)

The rate effect of normalization of the transactions encompassed by this proposal is but one factor to be considered in the overall cost of service analysis. As with any other cost of service determination, normalization may have the effect of increasing a company's allowable revenue levels. The pertinent question is whether the resulting overall rate (i.e., the "end result") is unjust, unreasonable, unduly discriminatory or otherwise unlawful;[52] this is necessarily a case-specific assessment.

The table attached to this proposal as Appendix B sets forth the most current information available concerning the practices of state regulatory authorities with respect to normalization. Although state commissions differ considerably in their approaches to normalization, the table indicates that approximately 45 states have permitted normalization with respect to one or more timing difference transactions. Insofar as a particular state follows normalization practices similar to those of this Commission, normalization itself cannot be labelled as a cause of price squeeze.

Furthermore, even in instances where state commissions proscribe the use of normalization, we cannot conclude, as a generic matter, that our rule permitting normalization will occasion any undue disparity between relevant wholesale and retail rates. There are many differences between the principles which this Commission utilizes in setting wholesale rates and those which the various states employ in establishing retail rates. Examples include disparate treatment of rate of return, cost allocation formulae, rate base valuation methods, as well as test year selection and adjustments. It is quite conceivable that such divergent policies would have offsetting rate effects that would minimize or eliminate any rate disparity otherwise created by conflicting state-federal normalization practices.[53]

Based upon our considered opinion that Commission decisions on cost of service issues will often reduce proposed wholesale rates to a level at which price squeeze concerns are substantially diminished, if not eliminated, we recently revised our general procedures for considering price squeeze allegations.[54] Subject to discretionary modification by the presiding administrative law judge in a given case, price squeeze proceedings are now phased so that a determination concerning the otherwise just and reasonable rate level will precede an examination of price squeeze allegations. Certainly, where a price squeeze is demonstrated, the impact, if any, of normalization must be considered. However, under the phased procedures which have been initiated, normalization will appropriately be examined along with all other cost of service factors in the particular proceeding. If undue discrimination is found to exist and is caused in whole or in part by differing state-federal treatment or normalization, the Commission may consider the denial of normalization as one of the available remedies for reducing or eliminating the undue discrimination. We believe that any other treatment of normalization as it relates to price squeeze would constitute an artificial and unwarranted isolation or normalization as a ratemaking issue unrelated to other cost of service elements.

VIII. Summary of the Proposed Rule

Proposed § 2.202 permits use of the principles of tax normalization for transactions for which there are timing differences between the amounts of expenses or revenues (relating to those transactions) recognized for income tax purposes and the amounts recognized for ratemaking purposes under the Natural Gas Act or the Federal Power Act. However, those transactions for which the Commission or the FPC has previously articulated a policy of tax normalization are excluded from the scope of the rule.

The general rule in paragraph (b) permits an electric utility or a natural gas pipeline to compute its income tax allowance for its cost of service as if the amounts of expenses or revenues recognized for ratemaking purposes were recognized in the same period for income tax purposes. Thus, tax normalization will be permitted in the periods in which the differences in the amounts recognized first arise and in the periods in which they reverse. Because normalization is optional rather than mandatory, utilities that are required by their state commissions to flow-through for accounting or ratemaking may continue the flow-through practice in their wholesale filings. However, the election affords these utilities the option of using tax normalization for wholesale service alone.

Paragraph (b)(2) states what modifications must be made to rate base when a utility elects to use tax normalization. It codifies existing Commission practice with regard to rate base adjustments for accumulated deferred income tax accounts. Such adjustments are companion practices to tax normalization and relate to Accounts 188, 190 and 281–283 of the Uniform System of Accounts for Electric Utilities and Licensees and to Accounts 188, 190, 191 and 281–283 of the Uniform System of Accounts for Natural Gas Companies.

A utility can only make an election in the context of a rate filing. Although a rate applicant cannot be required to make the initial election (and an intervenor may not use tax normalization to challenge rate filings predicated on flow-through), once it makes such an election it must obtain Commission approval before discontinuing use of tax normalization. This condition is stated in paragraph (c) which also requires that an applicant making an election under § 2.202 apply the principle of tax normalization to all transactions covered by that section, i.e., all timing differences other than those addressed in Orders 203, 204, 408, 432, 404, 504, 505, 566 and 13 and Opinion 578.

The rule further provides that if a timing difference arose in a period prior to the effective date of the election, the rate applicant may only recognize the tax effects of timing differences related to the transaction to the extent that deferred taxes applicable to the transaction have previously been provided for or to the extent that an applicant uses a Commission-approved

[52] *See, FPC* v. *Hope Natural Gas Company*, 320 U.S. 491, 602 (1944) (emphasizing the importance of focusing on the "end result" of various rate determinations).

[53] For instance, any short-term rate-inflating effect that may be ascribed to normalization might be offset, in whole or in part, if this Commission were to authorize a lower rate of return than that allowed in a particular state. The same result might occur with respect to our use of original cost in valuing a company's rate base, as contrasted with the use of reproduction cost or fair value by the state in which a jurisdictional company operates.

[54] *See, e.g., Arkansas Power & Light Company*, Docket No. ER79–339, Order issued August 6, 1979, at 6. *See, also, Price Squeeze-Procedural Rules*, Docket No. RM79–79, Notice of Proposed Rulemaking, issued November 19, 1979.

method for switching from flow-through to normalization for particular timing difference transactions. Thus a rate applicant that had previously used flow-through for a transaction would not be permitted to use tax normalization for that transaction if the timing differences associated with the transaction had already reversed or if no such Commission-approved method was used. However, this prohibition would not prevent the rate applicant from electing tax normalization for all other transactions to which the prohibition did not apply.

The timing differences excluded from the scope of § 2.202 relate to:

(1) Differences that result from the use of accelerated depreciation and Class Life Asset Depreciation Range (ADR) tax provisions of the Internal Revenue Code of 1954;

(2) Differences that result from the use of accelerated amortization provisions on certified defense and pollution control facilities;

(3) Differences that result from recognition of extraordinary property losses as a current expense for income tax purposes but as a deferred and amortized expense for ratemaking purposes;

(4) Differences that arise from recognition of research, development, and demonstration expenditures as a current expense for income tax purposes but as a deferred and amortized expense for ratemaking purposes;

(5) Differences that result from different reporting for income tax purposes and ratemaking purposes of deferred gains or losses from disposition of utility plant;

(6) Differences that result from the use of the Asset Guideline Class "Repair Allowance" provision of the Internal Revenue Code of 1954; and

(7) Differences that result from recognition of purchased gas costs as a current expense for income tax purposes but as a deferred expense for book purposes.

By defining the term "timing differences" in paragraph (d)(2) to exclude those differences which exist, at least in part, because income tax law and the Commission place different dollar values on a transaction (or one does not recognize the transaction), the Commission has also excluded from the tax normalization rule those transactions for which there are "permanent differences."

The Commission's proposed rule on tax normalization will have the force and effect of a substantive rule when issued in final form. It will appear as § 2.202 of a new subpart to Part 2 and will apply to public utilities and interstate pipelines. The proposed rule is not intended to modify existing accounting procedures contained in the Commission's Uniform Systems of Accounts.

IX. Comment Procedure

Interested persons are invited to submit written comments, data, views, or arguments with respect to this proposal. Comments should be submitted to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 and should reference Docket No. RM80–42. An original and 14 copies should be filed. All comments received prior to 4:30 p.m., E.D.T., June 30, 1980, will be considered by the Commission prior to promulgation of a final order. All written submissions will be placed in the public file which has been established in this docket and which is available for public inspection in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426, during regular business hours.

Comments are invited on all aspects of this proposed rule. In addition, comments and data are specifically invited on the following matters:

1. Data are requested from all interested parties on the impact of the proposed rule, including the impact on both consumers and industry.

2. Respondents are particularly invited to comment on the accuracy of the analysis of the impact of the timing difference transactions quantified in the staff study and attached as Appendix A.

3. Parties are requested to provide any available data pertinent to the additional timing difference transactions identified in Appendices A or C but not quantified, as well as identification and impact of any additional timing difference transactions.

4. Parties are further requested to comment on any unique problems that might be encountered in complying with the rule as proposed, any necessary delay in the effective date of a final rule following issuance of that rule in order to assure satisfactory compliance, and any limitations on the manner in which the rule should be applied to timing differences (related to expenses or revenues) that initially arose prior to the election by an applicant to normalize under the rule. (See § 2.202(c)(2).)

5. Comments are also requested on whether the Commission should require only one of the two methods currently used regarding AFUDC, the gross-of-tax method or the net-of-tax method, whether the Commission should follow state commission policy, or whether other considerations should apply. (*See*, Appendix A, Section II.E.1.)

Upon review of the comments, the Commission will consider whether public hearings are warranted.

(Federal Power Act, 16 U.S.C. § 792, *et seq.*; Natural Gas Act, 15 U.S.C. § 717, *et seq.*; Department of Energy Organization Act, 42 U.S.C. § 7101, *et seq.*; Administrative Procedure Act, 5 U.S.C. § 553, *et seq.*)

In consideration of the foregoing, the Commission proposes to amend Part 2 of Chapter I, Title 18, Code of Federal Regulations as set forth below.

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

PART 2—GENERAL POLICY AND INTERPRETATIONS

1. Part 2 is amended in the table of contents and at the end of the text of the regulations in Part 2 by adding a new Subpart to read as follows:

Rules of General Applicability

§ 2.202 Tax normalization for public utilities and interstate pipelines.

(a) *Applicability.* (1) Except as provided in paragraph (a)(2) of this section, this section applies to treatment for ratemaking purposes of all transactions for which there are timing differences.

(2) This section does not apply to timing differences addressed by the following orders and opinion:

(i) Order Nos. 203, 204 and 432 (relating to accelerated amortization of certified defense and pollution control facilities);

(ii) Order No. 404 and Opinion No. 578 (relating to accelerated methods of depreciation);

(iii) Order Nos. 408 and 566 (relating to research, development and demonstation expenses);

(iv) Order No. 504 (relating to accelerated methods of depreciation; research, development and demonstration expenses; extraordinary property losses; and use of the Asset Guideline Class "Repair Allowance" provision of the Internal Revenue Code of 1954);

(v) Order No. 505 (relating to deferred gains and losses from disposition of utility plant); and

(vi) Order No. 13 (relating to deferred gas costs under purchased gas adjustment clauses).

(b) *General rule.* (1) A rate applicant may elect to compute the income tax component of its cost of service by using tax normalization for all transactions to which this section applies.

(2) If a rate applicant makes an election under this section, its rate base

shall be reduced by the balances for those items related to rate base that are properly recordable in Account 281, "Accumulated deferred income taxes-accelerated amortization property;" Account 282, "Accumulated deferred income taxes-other property;" and Account 283, "Accumulated deferred income taxes-other." Balances for those items related to rate base that are properly recordable in Account 190, "Accumulated deferred income taxes," shall be treated as an addition to rate base. If an applicant uses an approved purchased gas adjustment clause or a research, development and demonstration tracking clause, the rate base reductions or additions required under this subparagraph shall apply only to the extent that the balances in Account 190 and Accounts 281 through 283 are not used, for purposes of calculating carrying charges, as an offset to balances properly recordable in Account 188, "Research development and demonstration expenditures," or Account 191, "Unrecovered purchased gas costs."

(c) *Conditions.* (1) Except as provided in paragraph (c)(2) of this section, a rate applicant making an election under this section shall be required to use tax normalization for all transactions to which this section applies.

(2) No recognition shall be given to the reverse tax effects of timing differences arising in a time period prior to such election unless:

(i) the applicant has previously provided for applicable deferred taxes; or

(ii) the applicant has adopted a Commission-approved ratemaking method of providing for such deferred taxes.

(3) A rate applicant making an election under this section shall be required to make such election for all future rate filings unless, upon application, the Commission orders otherwise.

(d) *Definitions.*

(1) "Tax normalization" means computing the income tax component as if the amounts of expenses or revenues recognized in each period for ratemaking purposes were also recognized in the same amount in each such period for income tax purposes.

(2) "Timing differences" means differences between amounts of expenses or revenues recognized for income tax purposes and amounts of expenses or revenues recognized for ratemaking purposes, which differences arise in one time period and reverse in one or more other time periods so that the total amounts of expenses or revenues recognized for income tax purposes and for ratemaking purposes in all of such periods are equal.

(3) "Income tax purposes" means for the purpose of computing income tax under the provisions of the Internal Revenue Code of 1954 or the income tax provisions of the laws of a State or political subdivision of a State (including franchise taxes).

(4) "Income tax component" means that part of the cost of service that covers income tax expenses allowable by the Commission.

(5) "Ratemaking purposes" means for the purpose of fixing, modifying, approving, disapproving or rejecting rates under the Federal Power Act or the Natural Gas Act.

(6) "Rate applicant" means a public utility or interstate pipeline that makes a rate filing under section 205 of the Federal Power Act or under sections 4 or 7 of the Natural Gas Act. Interstate pipeline means a natural gas company engaged in natural gas transportation subject to the jurisdiction of the Commission under the Natural Gas Act.

(7) "Transaction" means an activity or event that gives rise to an accounting entry that is used in determining revenues or expenses.

Appendix A—Staff Study on Comprehensive Tax Normalization

March 1980

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I. Introduction

This study is prepared in response to the Commission's request for an analysis of the proposed ratemaking rule for tax normalization. The study has two objectives: (1) an analytical exposition of the essential differences between the normalization and flow-through policy options and (2) a quantitative assessment of the impacts of the FERC's adoption of normalization.

The issue addressed by the proposed rule involves the appropriate interperiod allocation of a particular cost, taxes, in setting rates for electric utilities and natural gas pipelines.[55] More specifically, the issue is one of determining the appropriate period(s) in which to reflect the tax effects of certain expense and revenue transactions (referred to as "timing difference transactions") in the calculation of the tax allowance of the jurisdictional cost of service. Timing difference transactions are expenses and revenues

[55] For purposes of this study, the term "utility" refers to both electric utilities and natural gas pipelines.

which are recognized in the determination of ratemaking cost of service in different periods than when they are recognized in the computation of income taxes payable. Timing difference transactions create "timing differences" or differences between pretax cost of service (or accounting) income and taxable income that are offset by corresponding differences in other period(s). The tax effects of timing differences are the *temporary* tax reductions associated with the deduction of specific expense transactions and the *temporary* tax additions associated with the inclusion of specific revenue transactions in the determination of income taxes payable.[56]

Two methods have been proposed for dealing with the tax effects of timing difference transactions: normalization and flow-through. The distinction between these methods if based on whether the tax allowances in a utility's cost of service recognizes the expenses and revenues according to the interperiod allocation policies of the Internal Revenue Service (IRS) or according to those of the regulatory agency. Flow-through ratemaking determines a tax allowance based on the recognition of expenses and revenues in the same period that the utility is permitted to recognize them for tax purposes. In so doing, flow-through attempts to set rates for each period that would permit the utility to recover only the taxes it will actually pay in each period. In contrast, the normalization tax allowance is based on the recognition of expenses and revenues in the same period as when they are themselves recognized for ratemaking. Normalization attempts to set rates for each period that "match" the tax effects of specific expenses and revenues with the utility's recovery of expenses or pass-through of revenues.

The Commission [57] has already adopted a normalization policy with respect to the following timing differences:

(1) Differences that result from the use of accelerated depreciation and Class Life Asset Depreciation Range (ADR) tax provisions. (Order No. 404, May 15, 1970; Opinion No. 578, June 3, 1970; and Order No. 504, February 11, 1974).

(2) Differences that result from the use of accelerated amortization provisions on certified defense and pollution control facilities. (Order Nos. 203, May 29, 1958; 204, May 29, 1958; and 432, April 23, 1971).

(3) Differences that arise from recognition of extraordinary property losses as a current expense for tax purposes but as a deferred and amortized expense for book purposes. (Order No. 504, February 11, 1974).

(4) Differences that arise from recognition of research, development and demonstration expenditures as a current expense for tax purposes but as a deferred and amortized expense for book purposes. (Order No. 408, August 26, 1970; 504, February 11, 1974; and 566, June 3, 1977).

(5) Differences that result from different tax and book reporting of deferred gains or losses from disposition of utility plant. (Order No. 505, February 11, 1974).

(6) Differences that result from the use of the Asset Guideline Class "Repair Allowance" provision of the Internal Revenue Code of 1954. (Order No. 504, February 11, 1974).

(7) Differences that result from recognition of purchased gas costs as a current expense for tax purposes but as a deferred expense for book purposes. (Order No. 13, October 18, 1978).

The proposed rule would generalize, with a single regulation, the application of normalization to all other (miscellaneous) timing difference transactions. The proposed rule does not contemplate further review of previous orders approving normalization for the transactions identified above. Nor does it propose to amend the current regulations at this time with respect to ratemaking treatment for these transactions.[58] This study therefore will concentrate on the major additional timing difference transactions which would qualify for normalization under the proposed rule and which were the subjects of the remanded Order No. 530–B.[59]

This study is concerned primarily with the ratemaking aspects of the proposed rule. The accounting changes specified in the 530 orders have not been contested and are therefore continued in effect by the proposed rulemaking.

Section II explains, in more detail, the nature of interperiod tax allocation and how the alternative policies of normalization and flow-through work. Section III provides some quantitative assessment of the impact on utility rates of moving from a flow-through to normalization policy for the following timing differences:

(1) Differences that result from recognition of the following items as current expenses for tax purposes and as capitalized and amortized expenses for ratemaking purposes:

(a) the interest component of the Allowance for Funds Used During Construction (AFUDC);

(b) construction-related pensions; and

(c) construction-related taxes.

(2) Differences that result from the use of different depreciation lives for taxes and ratemaking.

(3) Differences that result from recognition of regulatory commission cost as a current expense for tax purposes and as an expense amortized over a number of years for ratemaking.

(4) Differences that result from the deduction of plant "removal (or dismantling) cost" on an "as paid" basis for tax purposes and its prior amortization over the life of the plant for ratemaking.

On an industry-wide basis, for both electric utilities and natural gas pipelines, these items constitute the major dollar items qualifying for the proposed normalization treatment. Applying tax normalization to these items would have the largest and most widespread impacts. There are numerous other items of expense and revenue that may be eligible for the proposed normalization treatment. See Appendix C of the rulemaking proposal for a more extensive, though still incomplete, listing of these items. Some of these other items may be significant for individual companies at various times. However, staff's review of these other items does not indicate any significant impact on average industry-wide electric and gas prices. Further, due to the sporadic occurrence of these items, meaningful estimates of their impacts are not feasible except on a company-by-company basis.

II. Timing Differences and Interperiod Tax Allocation

A. Overview

Interperiod tax allocation is an example of the general problem of interperiod cost allocation that regulatory commissions must resolve for all cost items in the determination of "just and reasonable" rates. Every item of expense incurred by a regulated utility and permitted to be recovered in its rates is allocated over time in one of three ways:

(1) the expense may be charged to customers in the *same period* as it is paid by the utility (e.g., normal operation and maintenance expenses); or

(2) the expense may be charged to customers in a period or periods *after* it is

[56] Throughout this study, the term "temporary" is implicitly assumed whenever reference is made to the tax effects (consequences or benefits) of timing differences. Timing differences, by definition always "reverse or turn around" so that any connotation of permanance attached to tax effects of timing differences is unfounded and contradictory.

[57] The term "Commission" is used in this study to refer both to the FPC and to the FERC. Distinctions are made only where necessary for clarity.

[58] Current precedent is that these items are normalized for ratemaking. Nothing in the Commission's proposed rule would change that precedent.

[59] Order No. 530, Order Implementing that Portion of Docket No. R–424 Relating to Interperiod Allocation of Income Taxes and Docket No. R–446 to Achieve Comprehensive Interperiod Allocation of Income Taxes, issued June 18, 1975; Order No. 530–A, Order Denying Applications For Rehearing and Clarifying Prior Order, issued January 19, 1976; Order No. 530–B, Order Revising Prior Orders, issued July 6, 1976.

paid by the utility (e.g., capital and capitalized interest expenses of new plant and equipment); or

(3) the expense may be charged to customers in a period or period *before* it is paid by the utility (e.g., removal or dismantling costs of plant and equipment).

Taxes are a cost to utilities. Just as regulatory commissions must decide whether to allow any other cost to be recognized currently in rates to customers, deferred for recovery in later periods, or prepaid, they must likewise decide whether taxes are to be recognized currently, deferred, or prepaid.

The focus of this report is on a particular problem in interperiod tax allocation—the problem arising from the existence of *timing differences*. The purpose of this section is to explain the nature of timing differences and to provide an overview of how normalization and flow-through of the tax effects of timing differences work in ratemaking.

Timing differences arise from differences between tax regulations and regulatory pricing policies. The interperiod allocations of non-tax costs and revenues by state and federal regulatory commissions do not always coincide with the interperiod cost and revenue allocation policies of the IRS. There is no reason why they should since the objectives of the IRS are often quite different from those of regulatory commissions. However, when the interperiod allocation policies diverge, timing differences are created.

Timing differences may be defined as differences between taxable income and pretax accounting income arising from "differences between the periods in which transactions affect taxable income and the periods in which they enter into the determination of pretax accounting income."[60] By substituting the phrase "pretax cost of service income" for "pretax accounting income," the definition can be made to apply to the ratemaking aspects of timing differences with which this report is primarily concerned.[61] A transaction which gives rise to a timing differene is called a *timing difference transaction.* Finally, the *tax effect of a transaction* (timing difference transaction or other) is defined as the tax reduction associated with the deduction of a specific expense transaction or the tax addition associated with the inclusion of a specific revenue transaction in the determination of income taxes payable.

There are two essential characteristics of timing differences. First, the differences (in pretax cost of service income and taxable income) arise in one period and reverse in one or more subsequent periods. Second, the reversal of the difference exactly offsets the original difference, i.e., the total amount of each timing difference transaction recognized for tax purposes over time is exactly equal to the total amount recognized for ratemaking.

In contrast, and so as to more clearly distinguish timing differences, *permanent differences* are differences between taxable income and pretax cost of service (or book) income that are not offset by reversals in other periods. Both an originating and a reverse difference are involved in timing differences. Permanent differences, however, involve only an originating difference which is never followed by a reverse difference. Permanent differences arise when a higher dollar value is placed on an expense or revenue transaction for tax purposes than for ratemaking, or vice versa. For example, until recently, a significant source of permanent differences was the statutory depletion provision of tax laws which permitted depletion deductions for tax purposes in excess of the actual costs incurred by firms. This creates a taxable income less than pretax cost of service income that is never offset by a reversal in any other period. The total expense deduction taken for tax purposes is greater than that for ratemaking. Other examples of transactions creating permanent differences include municipal bond interest, political contributions, and contributions toward officers' life insurance policies.

There are four types of transactions that qualify as timing difference transactions:

I. *Expenses* that are recognized for tax filings in periods *prior to* when they are recognized in rates;

II. *Expenses* that are recognized for tax filings in periods *later than* when they are recognized in rates;

III. *Revenues* that are recognized for tax filings in periods *prior to* when they are recognized in rates; and,

IV. *Revenues* that are recognized for tax filings in periods *later than* when they are recognized in rates.

As will be shown, Types I and IV reduce the income taxes that a utility would otherwise have to pay currently and raise the tax liability later. Types II and III increase the utility's current tax liability and decrease it later.

In this report we will concentrate on the Types I and II expense timing difference transactions. Revenue transactions can be viewed simply as negatives of expense transactions and do not require separate analysis. A second reason for concentrating on the expense types is that they are the most prevalent [62] and have the most significant impacts on utility rates.

One of the most significant expense items that would qualify for normalization under the proposed rule is the interest expense on loans used to finance construction of new plant and equipment. This is a Type I expense timing difference. This expense may be deducted for tax purposes as it is paid by the utility during the construction period, but it is not generally included as an expense in the ratemaking cost of service during that period. Instead, it is capitalized as the interest component of the Allowance for Funds Used During Construction (AFUDC) and amortized as part of the annual depreciation charge over the economic life of the plant. For both taxes and ratemaking, the total amount of AFUDC interest recognized over the construction period and operating life of the plant is identical.[63]

An example of a Type II timing difference that has effects opposite to those of the Type I AFUDC interest expense example is plant removal cost. For ratemaking, removal (or dismantling) cost may be included (as estimated) as part of the depreciation allowance over the life of the plant in the same manner as the interest expenses during construction. However, under current tax regulations, this cost cannot be recognized as a deduction for tax purposes until it is actually incurred

[60] Accounting Principles Board Opinion No. 11, issued December 1, 1967, paragraph 13e.

[61] For purposes of the discussion throughout this study, it is assumed that book income equates to cost of sevice income. It should be kept in mind, however, that there is a discontinuity in ratemaking that is absent in accounting. Rates are set on a test year basis and actual financial events may not precisely track the items of expense and revenue reflected in the cost of service. Further, the generalization that cost of service income equates to accounting income is an oversimplification since there are transactions entering into the determination of book income that relate to operations not providing service to ratepayers and, thus, not entering into the determination of ratemaking cost of service. Fines and penalties, examples of permanent differences, as discussed *infra*, are not deductible for tax purposes but are deducted in determining book income. However, they do not enter into the determination of cost of service income, i.e., they are treated as below-the-line expenses, since they are not allowable items of expense.

[62] See Appendix C to the proposed rulemaking.

[63] In some jurisdictions, the utility is permitted to include Construction Work in Progress (CWIP) in rate base with a return permitted on it. Where this occurs, the interest expense on loans used to finance construction activity is effectively recognized and charged to customers in the same periods as it is paid by the utility and recognized by the IRS. Thus, when CWIP is included in rate base, the construction period interest expense does not create a timing difference.

when the plant is dismantled. The timing difference originates during the operating life of the plant when the expense for taxes is less than the expense for ratemaking. Later, when the plant has lost its usefulness and is dismantled, the reversal occurs and the expense for taxes becomes greater than the expense for ratemaking. As with the AFUDC interest expense example, the total amount of the expense recognized for tax purposes over time is exactly equal to the total amount recognized for ratemaking. Flow-through and normalization are methods of dealing with the tax effects of timing difference transactions. Flow-through follows the interperiod allocation policies of the IRS to establish a cost of service tax allowance in each period equal to actual tax liability. Normalization, on the other hand, "matches" the tax effects of transactions in rates with the recognition of the transactions themselves in rates.[64]

These points and others may be made clearer with some numerical illustrations. Suppose, initially, that a utility has a constant annual revenue requirement (cost of service) of $1,000 with component costs as given below:

Case I: Base Case

Year	0	1	2
Equity return	$200	$200	$200
Income taxes	200	200	200
Other expenses [1]	600	600	600
Base required revenues (rates)	1,000	1,000	1,000

[1] Other expenses include all costs other than return on equity and income taxes, e.g., operation and maintenance expenses, depreciation, taxes other than income taxes, and interest charges.

In the Base Case, also assume that all costs are allocated identically over time for taxes and rates; that is, there are no timing differences. Under this assumption, the cost of service tax allowance can be said to be equal to the utility's actual tax liability in each period. The assumed tax rate is 50 percent.

The $1000 annual revenue requirement is the total cost of providing existing service. In providing this service, the utility had to obtain equity capital to finance its rate base and must, on a current basis, provide a return ($200) on this capital. The tax component of the cost of service arises from the fact that taxes are assessed on equity income. In other words, the $200 tax liability is one of the costs of providing the existing level of service.[65]

Now suppose that the utility incurs an additional non-tax expense of $100 in year zero. Initially, suppose also that tax regulations permit the utility to deduct the $100 expense in determining its tax payment during year zero. Regulatory policy, however, requires that the expense be capitalized and spread out in equal installments of $50 over years one and two.[66] In other words, tax regulations allocate the expense completely to year zero while regulatory policy requires that it be allocated to years one and two.[67]

The difference in the tax and ratemaking interperiod allocations of the $100 expense creates a Type I timing difference. The timing difference originates in year zero when the expense recognized for tax purposes ($100) is greater than the expense recognized for ratemaking purposes ($0). The difference reverses, however, during years one and two when the expense for taxes ($0) is less than the expense for ratemaking ($50). The total amount of the expense recognized for taxes over the three years ($100) is exactly equal to the total amount recognized for ratemaking ($100).

In Cases II through V, we examine the effects of various approaches to setting rates that permit the utility compensation for the additional $100 non-tax expense. For simplicity, in evaluating the approaches we will initially consider only the first-order effects on the cost of service. This includes the allowance for the expense itself and any direct tax consequences of the expense. In Case II, the additional expense is treated on a current basis for ratemaking, i.e., it is recognized in rates at the time of incurrence by the utility. This means that the utility collects for the expense through rates charged during the same year as it expends funds for it. In the succeeding three cases, however, the utility is required to defer collection of the expense beyond the year of incurrence. As a result, the utility must finance the expense in the interim. The financing of this expense with some combination of debt and equity capital increases the utility's cost of service return component. The additional equity return requirement, in turn, increases the tax liability of the utility. Additionally, under normalization (Case IV), part of the above financing need is effectively handled with the deferred tax allowance included in rates. This also has second-order effects on the return and tax components of the cost of service which will be discussed in the next section.[68]

In comparing the four cases that follow, it is important to observe that the cumulative total cost of service for the three-year period is the same—$3100. This is composed of the $3000 base cost of service and the incremental $100 expense. The cases differ only in the interperiod allocation of the $3100 in costs. In particular, the cases differ in the allocation of two costs—the additional expense and income taxes. As we proceed through the cases, we will discuss and stress the importance of comparing the allocation of the $100 expense with the allocation of taxes.

A second important point is that the incremental expense itself has no tax cost associated with it since it is not equity income. It neither increases nor deceases the total amount of taxes the utility must pay over the three-year period. In all cases, the total tax cost is $600. However, when the allocation of the expense over time for ratemaking and for taxes is different, as it is in Cases IV (normalization) and V (flow-through), the taxes the utility must pay in each period are affected. Further, in Case V (flow-through) the difference in ratemaking and tax allocation affects the tax allowance in each period.

Case II: Ratemaking Allocation Conformed to Tax Allocation

Year	0	1	2
Allocation for taxes	$100		
Allocation for rates	100		
Base equity return	200	200	200
Base income taxes	200	200	200
Additional income taxes			
Base other expenses	600	600	600
Additional expense	100		
New required revenues (rates)	1,100	1,000	1,000

By conforming regulatory policy to tax policy, the timing difference is eliminated. Required revenues (rates)

[64] In contrast, normalization is not applicable to *permanent differences* because the income taxes payable for the period in which the differences occur matches the revenues and other expenses recognized for book (and ratemaking) purposes in that period. There is no difference between the IRS and regulatory *interperiod allocation* policies. Rather the difference is in the *amount* of expenses and revenues recognized under the two policies.

[65] The pretax cost of service income (equals taxable income) is $400 ($1000–$600). When this is multiplied by the assumed 50 percent tax rate it yields a $200 tax liability and leaves a $200 return available to stockholders.

[66] This could happen because the plant for which the expense was incurred did not come on line until year one, and following the ratemaking policy of "used and useful," cost recovery would be allowed only after plant operation.

[67] In this example and through much of this study we assume that the recognition of expenses for taxes in coincident with the cash basis of the transaction, i.e., when the utility actually outlays funds for the expense. Timing differences arise, however, when tax regulations and regulatory policies recognize an expense in different periods irrespective of when the outlays are actually made by the firm. See footnote in Section II. B. 2 and discussion in Section II. C.

[68] See Section II. B. 1, *infra*.

rise only in year zero to permit the utility to charge customers for the additional expense in that year. The taxes allowed in year zero will equal the taxes actually paid since the increase in rates brings taxable income ($1,100−$700=400) up to the same level as pretax cost of service income ($1,100−$700=400). As a result, the allocation of taxes in rates remains the same as in the Base Case.

In Case III, the effects of hypothetically conforming tax regulations to ratemaking policy are considered.

Case III: Tax Allocation Conformed to Ratemaking Allocation

Year	0	1	2
Allocation for taxes		$50	$50
Allocation for rates		50	50
Base equity return	$200	200	200
Base income taxes	200	200	200
Additional income taxes			
Base other expenses	600	600	600
Additional expense		50	50
New required revenues (rates)	1,000	1,050	1,050

Again the timing difference is eliminated. The expense is allocated to the same years for both taxes and ratemaking. The increase in rates during years one and two brings taxable income and pretax cost of service income into equality so that the allocation of taxes remains the same as in the Base Case.

While Case III represents an unlikely occurrence, it establishes the time pattern of rates when the regulatory agency's interperiod cost allocation policy overrides tax policy. The ratemaking determination that the additional expense should be allocated in equal amounts to years one and two is directly reflected in the rates. Required revenues are unchanged from the Base Case in year zero and are $50 higher in each of years one and two.

In Cases IV and V, we take the timing difference as given, i.e., no change in the tax or ratemaking expense allocation policies, and compare the effects of the flow-through and normalization policy options.

Case IV: Type I Timing Difference, Normalization Policy

Year	0	1	2
Allocation for taxes	$100		
Allocation for rates		$50	$50
Base equity return	200	200	200
Base income taxes	200	200	200
Additional income taxes:			
Current	(50)	25	25
Deferred	50	(25)	(25)
Base other expenses	600	600	600
Additional expense		50	50
New required revenues (rates)	1,000	1,050	1,050

Case V: Type I Timing Difference, Flow-Through Policy

Year	0	1	2
Allocation for taxes	$100		
Allocation for rates		$50	$50
Base equity return	200	200	200
Base income taxes	200	200	200
Additional income taxes current	(100)	50	50
Base other expenses	600	600	600
Additional expense		50	50
New required revenues (rates)	900	1,100	1,100

In both of these cases, the allocation of the additional $100 expense raises cost of service by $50 in each of years one and two. Where these two cases differ is in the allocation of the utility's $600 total income tax expense. The tax allowance in each year under normalization (Case IV) is the same as in the Base Case—$200 per year. Under flow-through (Case V), however, the tax allowance is $100 in year zero and $250 in each of years one and two.

Consider first the allocation of taxes under normalization (Case IV). The tax allowance in this case is composed of two parts—current (or actual) taxes and deferred taxes. In year zero the current tax liability is $150, reflecting the $200 Base Case current liability less the tax benefits of $50 resulting from the deduciton of the incremental $100 expense. (.50×$100). However, since normalization permits the utility to retain the tax benefits arising from expenses that will not be recognized in rates until a later date, a deferred tax allowance equal to the tax benefit of the expense is included in the cost of service. The result is to set rates in year zero "as if" the utility had not incurred the expense. In years one and two, the reverse situation occurs. The current tax liability of $225 is higher than the base case liability in both of these years by $25. This reflects the fact that revenues include an allowance of $50 for an expense that was already used as a tax deduction in the utility's tax filing in year zero. The deferred tax component in these years, however, is negative to reflect the pass-through in rates of the tax benefits that were previously permitted to be retained by the utility in year zero Of primary importance in this analysis is that the total tax allowance in each year remains the same as in the Base Case—$200 per year—and the resulting time pattern of rates is identical to that of Case III. Normalization effectively neutralizes the effects of the contrary tax regulations on rates to obtain the result of simply allocating the incremental expense to the rates charged in years one and two.

Under a flow-through policy (Case V), the tax allowance in the cost of service is set equal to the actual tax liability of the utility in each year. If, in year zero, the utility were allowed the Base Case required revenues of $1,000, the deduction of the additional expense would cause the utility's actual tax liability to be $150. But the Base Case tax allowance was $200. Since the intent of the flow-through policy is to "flow through" to customers, in lower rates, the tax benefit attributable to the higher expenses recognized for taxes, it would appear that required revenues should be lowered by $50. However, this would not be enough to equate the taxes allowed with the taxes actually paid. With allowed revenues set at $950 to include a tax allowance of $150 rather than $200, the utility's taxable income is $250 ($950–$700) and its actual tax liability is $125. Once again the tax payment is lower than the tax allowance. To obtain the result of having taxes allowed equal to taxes paid in year zero, the tax allowance and required revenues must be lowered by $100 below the Base Case.[69] Only then would the taxes allowed ($100) equal the taxes actually paid in year zero (.50 × ($900–$700) = $100). By a reverse process, required revenues must be raised by $50 in each of years one and two to obtain the result of taxes allowed equal to taxes paid. Thus, the flow-through tax allowance is $100 lower than the Base Case in year zero and $50 higher in each of years one and two. The cumulative three-year tax liability of the utility, however, is not changed from the Base Case. It remains at $600. What occurs is simply a reallocation of the tax liability (and allowance) between year zero and years one and two.

Finally, it should be emphasized that the $100 tax liability that is shifted from the rates charged during year zero to the rates charged during years one and two is greater than the $50 in tax benefits associated with the deductibility of the incremental $100 expense. Flow-through does more than simply reallocate these tax benefits. It lowers rates an additional $50 in year zero and raises rates an additional $25 in each of years one and two. Thus, flow-through results in a distortion of the pricing objectives of the regulatory commission. Although the regulatory commission has determined that $50 of expenses may be collected in rates in each of years one and two, flow-through would raise revenues in each of years one and two by $100 and lower them in year zero by $100, when the expense is actually incurred. On the other hand, normalization results in rates precisely matching the commission's intention for

[69] A more detailed explanation of this result is presented in Section II. B.1, *infra*.

cost recovery; that is, rates increase only by $50 in each of years one and two.

From an overall perspective, the difference in the allocation of taxes under normalization (Case IV) and flow-through (Case V) derives from differences in the allocation of the incremental expense as a deduction for purposes of determining the tax allowance. Normalization allocates the tax deduction to years one and two, the years when the expense itself is reflected in rates. Flow-through, however, allocates the tax deduction to year zero, the year in which it is actually used by the utility in its tax filing. This comparison between the two policies reflects the differences in the basic objectives of each. Normalization attempts to "match" the allocation of the tax deductibility of expenses with recovery of the expenses themselves. In this way, the customers (in years one and two) that pay the expense obtain the benefits of the tax deductibility of the expense. The objective of flow-through, however, is to allocate taxes on a current bases, i.e., when they are actually paid. Thus, since the utility is permitted to deduct the incremental expense in year zero, the flow-through tax allowance is based on the deductibility of that expenses in year zero. In so doing, however, flow-through gives the benefits of the tax deductibility of the expense *and more,* as indicated above, to customers in year zero.

A primary rationale for normalization is equity—a matter of fairness in letting the customers who pay the expenses get the tax benefit that those expenses created. This is the *matching principle.* If we view the incremental expense in the above example as the interest portion of the Allowance for Funds Used During Construction (AFUDC), this principle may be made clearer. Year zero is the construction period for a new plant during which the AFUDC interest liability is incurred by the utility. Years one and two represent the operating life of the plant. By capitalizing the AFUDC interest into the rate base value of the plant when it becomes operational, the burden of paying the expenses is placed on customers during the operating life when they also receive the benefits from the use of the asset. The timing of collection in rates for the costs of producing the asset is thus coincident with, or matches, the use of consumption of the asset. Normalization attempts to achieve the same sort of matching with the tax benefits associated with the AFUDC interest. During the operating life when customers must bear the burden of the expense itself, they receive the tax benefits associated with it.

The primary rationale for flow-through is one of charging customers in each year no more than the actual (current) tax liability of the utility. This is referred to as the *actual taxes paid principle.* There is an inconsistency, however, attached to reliance on this principle since such a principle is not applied to all other costs. In other words, flow-through proponents generally do not advocate an "actual cost incurred (or paid)" principle. Returning to our illustration of AFUDC interest expenses, application of the actual cost incurred principle would require that the interest expenses themselves be recovered in rates at the time of incurrence. This is our Case I example where both the expense and taxes are allocated on an "as incurred" basis.[70] Thus, the main rationale for flow-through requires the application of inconsistent regulatory principles to taxes and to other costs.

Cases II through V were designed to illustrate the impact on rates of a single Type I timing difference transaction. Type II timing difference transactions affect rates in an opposite manner. For example, if the $100 incremental expense was incurred and allowed as a deduction for tax purposes in year two but allocated to years zero and one for ratemaking, the time pattern of required revenues would be opposite to that depicted in each of the above cases. With respect to the simple comparison between normalization and flow-through, normalized rates would be lower than flow-through rates in years zero and one and higher in year two. Both policies would allocate the expense itself to years zero and one. Similar to the earlier example, the difference in rates would be due to the allocation of taxes or, alternatively, the tax benefits arising from the deductibility of the expense. Since the expense itself is being recovered in rates during years zero and one, normalization would allocate ("match") the tax benefits from the deductibility of the expense to the same years. Flow-through, however, would allocate these benefits and more to year two, while raising rates in years zero and one.

There are several factors that are not considered in these simple cases but are discussed and analyzed in the remaining portions of the study. In the next section, a more detailed single transaction example is presented where we address, as noted above, the second-order effects of financing the deferral of the timing difference expense and of reducing rate base by the amount of accumulated deferred taxes. By ignoring these effects in the above cases, we obtained an equal-revenue result in undiscounted dollars, i.e., the cumulative required revenues are $3100 in each of the Cases II through V. In the next section, with the financing factor considered, we obtain an equal-revenue result in present value (discounted dollar) terms.

The above comparisons between normalization and flow-through have been directed solely toward the effects of each policy on rates. In the next section we address these effects in more detail but also consider two other impacts—on cash flow and on rates of return to stockholders.

Our discussion so far has also only addressed what happens to rates when a single timing difference transaction is introduced. This is important in providing an understanding of the basic logic of normalization and flow-through. However, much of the controversy on this issue is based on the effects over time of more than one transaction. In particular, there is concern that tax benefits associated with new transactions may offset the reversals occurring on earlier transactions. Consequently, a reversal of the differences for a group of similar (or different) transactions may not occur, at least within the foreseeable future. Under such circumstances, normalization may result in a utility continually being allowed a higher allowance for taxes in its cost of service than it will, in fact, have to pay. This occurrence, referred to as a "continual tax deferral,"[71] is discussed in Section II. C, *infra.*

In that section, we discuss the implications of "continual tax deferrals" and explain how, from the customer's perspective, they result from "continual *cost* deferrals." That is, we point out that when a utility is permitted to defer the payment of taxes due to the existence of timing differences, the utility is simultaneously deferring the

[70] It should be noted that the Case I policy is akin to the policy of allowing CWIP in rate base.

[71] A "continual tax deferral" (sometimes referred to by the misnomer "permanent tax savings") may be defined to occur when accumulated deferred taxes are always positive or when they are always constant or growing. "Continual tax deferrals" result from successive expenses that are recognized as tax deductions prior to their collection in rates or from successive revenues that are recognized for tax purposes later than rate recognition. Expenses recognized as tax deductions *after* they are recovered in rates (or revenues recognized in taxes before they are recovered in rates) give rise to what might be called "continual tax prepayments." These "tax prepayments" actually are a debit in the accumulated deferred tax account on the asset side of the balance sheet.

collection, in rates, of the expenses that give rise to the tax deferrals. Further, we explain how, with a 50 percent tax rate, the deferred expenses are twice as large as the deferred taxes. It is also noted that there is no necessary link between the existence of "continual tax deferrals" and the rates charged under normalization being continually higher than those under flow-through. In fact, our statistical impact analysis in Section III shows that it is likely that natural gas pipelines may experience "continual tax deferrals" but also have rates under a normalization policy that fall below those that would exist under a flow-through policy.[72]

Another consideration that has thus far been ignored is the effect of the two policies on the cost of capital. Section II.D, *infra*, discusses this issue and provides some evidence supporting the view that the cost of capital to utilities employing flow-through is greater than to those using normalization.

B. Single Transaction Case

In evaluating the normalization and flow-through policy options, there are three primary impacts to consider:

(1) On customers as reflected in the required revenues (or rates) charged;

(2) On utilities as indicated by their cash flow situation; and

(3) On utilities shareholders as indicated by the rates of return they are able to earn.

In this section, we undertake a detailed analysis of these impacts for a single transaction that causes a timing difference.

In order to facilitate the analysis of these impacts we shall rely on another, more complicated numerical example involving a Type I timing difference. As indicated earlier, the exact patterns of the effects are different for the other types of timing differences by the principles involved are the same.

Consider again a utility that adds a new plant that has a one-year construction period and a two-year operating life. Direct construction expenditures of $100 million are made at the beginning of year zero and financed wholly by a short-term loan at an interest rate of 10 percent. Interest due and paid at the end of the construction period is $10 million ($100 million x .10). The plant becomes operational at the beginning of year one and is immediately refinanced with long-term debt and common equity in the following proportions and cost rates:

Source	Proportion	Cost rate (Percent)	Weighted cost (Percent)
	(1)	(2)	(1) x (2)
Debt	.60	10.0	6.0
Equity	.40	15.0	6.0
Total	1.00		12.0

The overall cost of capital after the plant is operational is thus 12 percent. We assume that the capital structure and component capital costs are the same under both policy options. The problem with these assumptions and the implications of dropping them are discussed later.[73] Under normalization, we also assume that the cash flow generated by deferred taxes is used to reduce the debt and equity capital requirements at the time of refinancing in proportion to their importance in the capital structure.

We assume, for simplicity, that rates are adjusted at the beginning of each year to allow the utility to recover those costs deemed allocable to that year by the regulatory commission. Further, there are no operation and maintenance expenses involved in running this new plant; the only costs to be recovered during the operating life are depreciation, return and taxes. We also assume that all earnings are paid out as dividends in each year. Finally, we assume that the tax rate is 40 percent. Choosing a tax rate other than 50 percent permits a clearer distinction between certain costs.

Table 1 presents the summary results of the utility's incremental required revenues for the $100 million plant under normalization and flow-through. For each of the three years, the base conditions are given in the upper part of the table. The revenue requirement adjustments under normalization, and flow-through and the difference between the two are shown in the rest of Table 1, along with detail on how the revenue requirements are derived from depreciation, return and taxes. Attached to Table 1 are the mathematical notes showing the cost of service relationships used to develop required revenues.

Table 1.—*Numerical Example of Differences Between Normalization and Flow-Through Revenue Requirements for AFUDC Timing Difference on Single Project*

[Dollars in millions]

	Year		
	0	1	2
Construction expenditures	100.		
AFUDC interest expense	10.		

Table 1.—*Numerical Example of Differences Between Normalization and Flow-Through Revenue Requirements for AFUDC Timing Difference on Single Project*—Continued

[Dollars in millions]

	Year		
	0	1	2
Rate base-b.o.y.		110.	55.
Book depreciation		55.	55.
Tax depreciation		50.	50.
Accumulated deferred Taxes (normalization only)-b.o.y.		4.	2.
Normalization revenue requirements:			
Depreciation		55.00	55.00
Return		12.72	6.36
Taxes		4.24	2.12
Total		71.96	63.48
Flowthrough revnue requirements:			
Depreciation		55.00	55.00
Return		13.20	6.60
Taxes	(6.67)	7.73	5.53
Total	(6.67)	75.93	67.13
Difference (normalization minus flowthrough):			
Depreciation			
Return		(.48)	(.24)
Taxes	6.67	(3.49)	(3.41)
Total	6.67	(3.97)	(3.65)

Note: ( ) indicates negative value; b.o.y.—Beginning of year

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[72] The same may be true for electric utilities, assuming a small cost of capital differential normalized and flow-through electric utilities.

[73] See Section II. D., *infra*.

Mathematical Notes to Table 1

Let

h = Cost of long-term debt used to finance rate base.
k = Cost of common equity used to finance rate base.
d = Debt ratio.
r = Overall rate of return (cost of capital).
$= h \cdot d + k \cdot (1-d)$
s = Cost of short-term debt used to finance construction activity.
y = Tax rate.

$$ADT_t = \begin{cases} 0 & ;t=0 \\ ADT_{t-1} + DT_{t-1} - DTR_{t-1} & ;t=1,N \end{cases}$$

CE_t = Construction expenditures in year t, incurred at beginning of year (equals construction work in progress in example).

$$= \begin{cases} \$100\ M \text{ (in example)} & ;t=0 \\ 0 & ;t=1,N \end{cases}$$

D_t^B = Straight-line book depreciation taken in year t.

$$= \begin{cases} 0 & ;t=0 \\ \dfrac{(CE_0 + s \cdot CE_0)}{N} & ;t=1,N \end{cases}$$

D_t^T = Straight-line tax depreciation taken in year t.

$$= \begin{cases} 0 & ;t=0 \\ \dfrac{CE_0}{N} & ;t=1,N \end{cases}$$

DT_t = Taxes deferred in period t.

$$= \begin{cases} y \cdot s \cdot CE_0 & ;t=0 \\ 0 & ;t=1,N \end{cases}$$

DTR_t = Deferred taxes recovered (amortized) in period t.

$$= \begin{cases} 0 & ;t=0 \\ \dfrac{DT_0}{N} & ;t=1,N \end{cases}$$

N = Service (book) life of plant.

RB_t = Rate base in year t (beginning of year).

$$= \begin{cases} 0 & ;t=0 \\ CE_0 + s \cdot CE_0 & ;t=1 \\ RB_1 - D_1^B & ;t=2 \end{cases}$$

Mathematical Notes to Table 1
(continued)

Only two components of the normalization and flow-through costs of service are different -- the return and tax allowances. For all years, the return and tax components of the normalization and flow-through costs of service can be expressed as follows:

R_t^f = return component of flow-through cost of service.

$$= r \cdot RB_t \quad (1)$$

R_t^n = return component of normalization cost of service.

$$= r \cdot (RB_t - ADT_t) \quad (2)$$

T_t^f = tax component of flow-through cost of service.

$$= \left(\frac{y}{1-y}\right)[k(1-d)(RB_t) - s \cdot CE_t + (D_t^B - D_t^T)] \quad (3)$$

T_t^n = tax component of normalization cost of service.

$$= \left(\frac{y}{1-y}\right)[k \cdot (1-d)(RB_t - ADT_t)] \quad (4)$$

The general equation for the difference between normalization and flow-through revenue requirements (RR) can thus be expressed as:

$$RR_t^n - RR_t^f = (R_t^n + T_t^n) - (R_t^f + T_t^f) \quad (5)$$

This reduces to the following:

$$RR_t^n - RR_t^f = \left(\frac{y}{1-y}\right) s \cdot CE_t - \left(\frac{y}{1-y}\right)(D_t^B - D_t^T) - \left[h \cdot d + \frac{k(1-d)}{(1-y)}\right] ADT_t \quad (6)$$

For the three period illustrative case, the following results are obtained:

$$RR_o^n - RR_c^f = \left(\frac{1}{1-y}\right) DT_o \quad (7)$$

$$RR_1^n - RR_1^f = -\left(\frac{1}{1-y}\right)\left(\frac{DT_o}{N}\right) - \left[h \cdot d + \frac{k(1-d)}{(1-y)}\right] DT_o \quad (8)$$

$$RR_2^n - RR_2^f = -\left(\frac{1}{1-y}\right)\left(\frac{DT_o}{N}\right) - \left[h \cdot d + \frac{k(1-d)}{(1-y)}\right]\left(1 - \frac{1}{N}\right) DT_o \quad (9)$$

Mathematical Notes to Table 1
(continued)

Equations (7), (8) and (9) are illustrative of the reduced form equations used in the simulation model of Section III.A.1, when the cost of capital is assumed equal under normalization and flow-through. The following equations, not used in the Table 1 calculations, are analogous to (7), (8), and (9) except that they also reflect the revenue requirement impacts attributable to cost of capital differences.

$$RR_c^n - RR_c^f = \left(\frac{1}{1-y}\right) DT_c \tag{10}$$

$$RR_1^n - RR_1^f = -\left(\frac{1}{1-y}\right)\left(\frac{DT_o}{N}\right) - \left[h' \cdot d' + \frac{k'(1-d')}{(1-y)}\right] DT_c + \left\{\left[h'd' + \frac{k'(1-d')}{(1-y)}\right] - \left[h''d'' + \frac{k''(1-d'')}{(1-y)}\right]\right\} RB_1 \tag{11}$$

$$RR_2^n - RR_2^f = -\left(\frac{1}{1-y}\right)\left(\frac{DT_o}{N}\right) - \left[h' \cdot d' + \frac{k'(1-d')}{(1-y)}\right]\left(1-\frac{1}{N}\right) DT_c + \left\{\left[h' \cdot d' + \frac{k'(1-d')}{(1-y)}\right] - \left[h'' \cdot d'' + \frac{k''(1-d'')}{(1-y)}\right]\right\} RB_2 \tag{12}$$

where

h', k' and r' = the capital costs, as previously defined, under a normalization policy.

h'', k'' and r'' = the capital costs, as previously defined, under a flow-through policy.

d' and d'' = debt ratio under normalization and flow-through, respectively.

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Table 2 presents financial statements for normalizaton and flow-through. Balance sheets, income statements, cash flow and tax reconciliation are given for the two treatments of the AFUDC interest timing difference.[74] The table also shows the difference between normalization and flow-through in the last three columns.

1. Impact on Rates

What are the incremental effects of this plant addition on the utility's rates during each year under the normalization and flow-through policy options? The most obvious differences between the two policies are higher revenue requirements under normalization during the construction year and lower revenue requirements during the operating life. This is shown on Table 1. This difference derives from the fact that, under normalization, the utility is permitted to retain the tax benefits derived from the AFUDC interest deduction during the construction period and pass those benefits to consumers over the operating life of the plant.

But this is not the whole story. Under both policies, the utility recovers the $10 million in AFUDC interest from consumers in equal installments of $5 million over the two-year operating life of the plant. This is shown on Table 1 by the fact that $55 million of book depreciation, rather than $50 million of tax depreciation is allowed for revenue determinations under both normalization and flow-through. Similarly, the comparative income and cash flow statements in Table 2 show $55 million of depreciation rather than $50 million under both policies. But tax regulations permit the utility to use the $10 million interest expense as a deduction when it is paid, that is, during the construction period (see, Table 2, Tax Reconciliation.) The utility is thus able to obtain tax benefits of $4 million during the construction year using the assumed 40 percent tax rate.

[74] For purposes of this example, it is assumed that a gross-of-tax AFUDC rate method is used. See Section II. E. 1, *infra*.

Table 2.—*Financial Statements Comparison Between Normalization and Flow-Through for AFUDC Timing Difference on Single Project*

[Dollars in million]

	Normalization year			Flow-through year			Difference: Normalization minus flow-through year		
	0	1	2	0	1	2	0	1	2
Balance sheet-beginning of year:									
Plant in service	0	110.00	110.00	0	110.00	110.00	0	0	0
Construction woek in progress	100.00	0	0	100.00	0	0	0	0	0
Less accumulated depreciation	0	0	55.00	0	0	55.00	0	0	0
Total assets	100.00	110.00	55.00	100.00	110.00	55.00	0	0	0
Common equity	0	42.40	21.20	0	44.00	22.00	0	(1.60)	(.80)
Long term debt	0	63.60	31.80	0	66.00	33.00	0	(2.40)	(1.20)
Short term debt	100.00	0	0	100.00	0	0	0	0	0
Accumulated deferred taxes	0	4.00	2.00	0	0	0	0	4.00	2.00
Total liabilities and equity	100.00	110.00	55.00	100.00	110.00	55.00	0	0	0
Income statement:									
Total revenue	0	71.96	63.48	(6.67)	75.93	67.13	6.67	(3.97)	(3.65)
Less depreciation	0	55.00	55.00	0	55.00	55.00	0	0	0
Less income taxes-current	(4.00)	6.24	4.12	(6.67)	7.73	5.53	2.67	(1.49)	(1.41)
Less income taxes-deferred	4.00	(2.00)	(2.00)	0	0	0	4.00	(2.00)	(2.00)
Operating income	0	12.72	6.36	0	13.20	6.60	0	(.48)	(.24)
Plus AFUDC	10.00	0	0	10.00	0	0	0	0	0
Total income	10.00	12.72	6.36	10.00	13.20	6.60	0	(.48)	(.24)
Less total interest expenses	10.00	6.36	3.18	10.00	6.60	3.30	0	(.24)	(.12)
Net income	0	6.36	3.18	0	6.60	3.30	0	(.24)	(.12)
Cash flow:									
Net income	0	6.36	3.18	0	6.60	3.30	0	(.24)	(.12)
Plus depreciation	0	55.00	55.00	0	55.00	55.00	0	0	0
Plus deferred taxes	4.00	(23.00)	(2.00)	0	0	0	4.00	(2.00)	(2.00)
Less AFUDC	10.00	0	0	10.00	0	0	0	0	0
Total internal cash flow	(6.00)	59.36	56.18	(10.00)	61.60	58.30	4.00	(2.24)	(2.12)
Tax reconciliation:									
Total revenue	0	71.96	63.48	(6.67)	75.93	67.13	6.67	(3.97)	(3.65)
Less tax depreciation	0	50.00	50.00	0	50.00	50.00	0	0	0
Less total interest expenses	10.00	6.36	3.18	10.00	6.60	3.30	0	(.24)	(.12)
Taxable income	(10.00)	15.60	10.30	(16.67)	19.33	13.83	6.67	(3.73)	(3.53)
Taxes-current	(4.00)	6.24	4.12	(6.67)	7.73	5.53	2.67	(1.49)	(1.41)
Plus Taxes-deferred	4.00	(2.00)	(2.00)	0	0	0	4.00	(2.00)	(2.00)
Total taxes	0	4.00	2.12	6.67	7.73	5.53	6.67	(3.49)	(3.41)

The flow-through policy seeks to pass these benefits to customers immediately. But, in doing this, the cost of service for year zero is reduced by more than the $4 million since reducing revenues by $4 million reduces the taxes the utility must pay still further. To achieve the result of a tax allowance equal to taxes actually paid during year zero, the flow-through cost of service is reduced $6.67 million[75] below what it would have been had the utility not incurred the interest expenses in the first place. In other words, the utility's rates are reduced below what they would have been had the utility not engaged in building the new plant. In contrast, normalization sets rates in year zero at the *same level* as they would have been if no new plant were being built.[76]

Having passed on the tax benefits during the construction period, the flow-through cost of service for the two years of the plant's operating life will be raised in exactly the reverse manner as that occurring during the construction period. In each of the two years, required revenues will be higher by about $3.33 million to reflect this impact. In contrast, under normalization, required revenues during the operating years reflect the pass-through of the benefits achieved by the utility as a result of having the use of the deferred tax funds and requiring less interim financing for the interest expense outlay made during the construction period.

The contrast between the two policies can be seen more clearly by only looking at the effects on required revenues of the addition of the AFUDC interest expense to the utility's cost of service. From Tables 1 and 2, we obtain the comparisons shown in Table 3.

Under the normalization policy, total revenue requirements are raised $5.96 milion in year one and $5.48 million in year two, but are the same in year zero as they would have been without the $10 million AFUDC interest expense. These additions to revenue requirements in years one and two include $.96 million and $.48 million represented by additional returns and additional taxes over and above the $5 million of interest expense depreciated in each year.

Table 3.—*Comparison of Revenue Effects of AFUDC Interest Expense Under Normalization and Flow-Through*

[Dollars in millions]

	Year		
	0	1	2
Normalization Required Revenues			
AFUDC Interest Expense		$5.00	$5.00
Tax Effects of Interest Expense:			
Current taxes	(4.00)	2.00	2.00
Deferred taxes	4.00	(2.00)	(2.00)
Return:			
On AFUDC portion of rate base		1.20	.60
On accumulated deferred taxes		(.48)	(.24)
Taxes:			
On accumulated deferred taxes		(.16)	(.08)
On equity portion of AFUDC rate base return		.40	.20
Total		5.96	5.48
Flow-Through Required Revenues			
AFUDC interest expense		$5.00	$5.00
Tax effects of interest expense: current taxes	(6.67)	3.33	3.33
Return: On AFUDC portion of rate base		1.20	.60
Taxes: On equity portion of AFUDC rate base return		.40	.20
Total	(6.67)	$9.93	$9.13

What is the basis for these additional returns and taxes? Let us first look at year one. At the beginning of the year, rate base includes $10 million of capitalized AFUDC expense incurred in the previous year. The $10 million higher rate base is allowed an overall return of $1.2 million (or $10 million times the 12 percent rate of return). Taxes also must be included in the cost of service on the equity portion of this higher allowed return. The equity portion of the return is $0.60 million (see *supra*, on the weighted costs of capital), and the taxes due on the equity return are $.4 million.[77]

At the beginning of year two, rate base is higher by $5 million, since $5 million of the original $10 million was depreciated in year one. The return on the $5 million in year two is $.60 million at a 12 percent rate of return, and the taxes on the equity portion of the return are $.20 million, calculated in the same manner as for year one.

Note that the return on the AFUDC portion of rate base and the taxes associated with the equity part of that return affect revenue requirements identically under normalization and flow-through, since the AFUDC interest expense ($10 million) is capitalized in the same way in either case. The difference between the policies [78] is in the return and taxes associated with the accumulated deferred taxes under normalization.

With normalization, rate base is lowered in accordance with Commission policy, at the beginning of year one, by $4 million, or the amount of deferred taxes accumulated from the prior year (year zero). The lower rate base means that the allowed return is lowered—by the deferred taxes times the rate of return, or $4 million times .12 = $.48 million. This is shown on the table as a negative, since it represents a decrease in the revenue requirements. The associated tax allowance is also decreased by an amount equal to the tax multiplier times the return on the equity portion of AFUDC in rate base.

For year two, rate base is lowered by $2 million of accumulated deferred taxes under normalization, and the return and tax allowance components of cost of service are adjusted downward by $.24 million and $.08 million, repsectively. The derivation of the return and tax allowance for year two follows the same method as used for year one.

Thus, under normalization, the AFUDC interest expenses along with the

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[75] The following iterative process demonstrates precisely how this result is achieved. If a $10 tax deduction lowers taxable income by $10, then at a 40% tax rate, actual taxes would be lowered by $4. Lowering the cost of service tax allowance (and therefore the cost of service revenues) by $4 in order to match actual taxes would lower taxable income by $14 ($10 plus $4). This in turn would reduce actual taxes by an additional $1.60 ($4×.4), for a total of $5.60 ($4 plus $1.60, or $14×.4). The tax allowance would again have to be lovered by an additional $1.60, for total of $5.60, in order to match actual taxes. But lowering the tax allowance by an additional $1.60 would lower taxable income by an additional $1.60, for a total reduction in taxable income of $15.60 ($10 plus $4 plus $1.60). The lower taxable income of $15.60 means a reduction in actual taxes of $6.24, again a mismatch between tax allowance and actual tax. This processs continues until the tax allowance equals t/(l–t) times the initial tax deduction, where t is the tax rate. In this example, the $10 million deduction lowers the tax allowance by $6.67 million or .4/(1−.4) times $10 million. The formula t/l–t is commonly referred to as the "tax multiplier."

[76] This is an oversimplification. For construction periods greater than one year, rates are lowered under normalization before the plant becomes operational to reflect the benefits achieved by the company in having the use of the deferred tax funds and thereby decreasing its needs for external capital. See Section II.E.1, *infra*, for further discussion of this point.

[77] The taxes are calculated using the tax multiplier, as described, *supra*, and can be shown mathematically as $.60 milion times t/(l–t), where t equals the tax rate.

[78] Other that the differences in the direct tax effects of the interest expense.

return and tax benefits derived from the use of the deferred tax funds are allocated to rates charged during the operating life of the plant in years one and two. In contrast, flow-through lowers rates by substantially more than the initial tax benefits during the construction year and must raise rates significantly above the allocated interest expense levels ($5 million) during the operating life.

The comparison between normalization and flow-through can also be made from a different perspective. Assume flow-through as the base case and examine the incremental effects of normalization, as shown in Table 1. During the construction year zero, required revenues are higher by $6.67 million as compared to flow-through reflecting the allowance of $4 million in deferred taxes plus enough allowance for current taxes on the additional revenues so that the utility retains the $4 million of deferred tax funds. Then, during each of the two operating years, required revenues are reduced by the reverse of the above process. In addition, since accumulated deferred taxes are used to reduce the rate base for each period, there is a reduction in interest payments, return on equity and taxes on the equity return.

Now consider the overall impact of normalization as compared to flow-through on customers' rates. Under our example, customers pay $6.67 million more in rates in year zero than would be the case under flow-through rates. In years one and two, however, required revenues (and rates) are reduced by $3.97 million and $3.65 million, respectively, or a total of $7.62 million. Although this net customer impact is realized only through rates, for explanatory puposes an analogy can be constructed comparing the rate consequences of normalization to those of a loan advanced by customers. Admittedly, this analogy is somewhat strained since the monies provided by customers can be characterized, at most, as an involuntary loan. Nonetheless, so that we may evaluate the results, let us assume that the additional revenues generated by normalization in year zero constitute such a loan and that the subsequent rate reductions in years one and two equate with a repayment of the principal plus interest, the interest being a return to the ratepayers on their collective loan.

In this analogy, the customers advance $6.67 million in year zero and receive (1) $3.33 million of the "principal" plus $.64 million "interest" in the first year and (2) the remaining $3.33 million of the "principal" plus $.32 million "Interest" in the second year.[79] The net effect is that customers realize a "rate of return" of 9.6 percent on the additional revenues they pay in year zero.[80] Moreover, this 9.6 percent "rate of return" corresponds exactly to the savings that the utility realized by initially receiving the additional revenues from normalization, i.e., its assumed after-tax cost of capital.[81]

In evaluating the "rate of return" customers realize under this "loan" analogy, it is noteworthy that the "return" is tax free. Because the "return" actually is realized in the form of reduced utility rates, it is not reported as income by the ratepayer. To compare this "return" with other returns that are subject to taxes, one must convert it to a before-tax return. The effective before-tax rates of return for selected tax rates using our example of a 9.6 percent after-tax rate of return are: [82]

Marginal tax rate (percent)

	Before tax rate of return (percent)
0	9.6
20	12.0
36	15.0
50	19.2

This comparison shows that the higher the marginal tax bracket, the higher will be the effective before-tax return. In terms of our example, it shows that a customer in the 20 percent marginal tax bracket realizes a 12 percent before-tax "return", i.e., a "return" equal to the utility's assumed overall cost of capital or allowed rate of return. A customer in the 36 percent marginal tax bracket realizes the same "return" as the common stockholders of the hypothetical utility, 15 percent. Finally, a customer in the 50 percent marginal tax bracket (e.g., an industrial customer or another privately owned utility) realizes a "return" above that of the common stockholders.

Under the assumptions that the utility's capital structure and component capital costs are the same with both policies, the customer's "return" on the deferred tax "loan" will be equal to the utility's after-tax cost of capital. However, this capital cost value as well as the utility's overall cost of capital depends upon the utility's capital structure and component costs of capital. As a result, the customer tax rates required to equate the customer's effective before-tax "rate of return" with the utility's overall and common equity costs of capital may not be precisely as those depicted above. The above results, however, are indicative of the results that would be obtained by using more realistic values for the parameters.

Of course, many of the jurisdictional utility's customers are municipally owned electric and gas distribution systems that have no obligation to pay Federal or state income taxes. For these customers, the utility's after tax rate of return (9.6% in our example) would be the "return" they would receive in the form of lower wholesale rates.

This analogy between normalization and a customer "loan" should be further qualified. The customers who provide the "loan" may not be the same as those who receive the "return of the principal and interest" because as time passes, customers move on and off utility systems. By the same token, however, one can point out that, under flow-through, the customers who pay the expenses (e.g., AFUDC interest) may not be the same as those that get the tax benefits from the deductibility of the expenses. In our example, flow-through gives these tax benefits and more (the $3.67 million above the $4 million tax benefit) to the customers during the construction period. However, it is the customers during the operating life of the plant who must pay the AFUDC interest expenses. In addition, they are required, under flow-through, to pay additional sums to make up for the lower revenues provided by customers during the construction period.

One final point should be made before discussing the cash flow impact. Our example assumed a one-year construction period. Relaxing this assumption to allow for longer, more realistic, construction periods would show that the deduction from rate base of accumulated deferred taxes under a

[79] An argument could be made, and is with respect to certain normalized items like accelerated depreciation, that the "loan" is not from customers but rather is from the Treasury since it is the tax regulations that permit a utility to write off certain expenses faster than they are recouped in rates. But, to make this argument hold for all normalized items, one also would have to argue that the Treasury makes negative "loans", i.e., requires the utility to make "loans" back to the Treasury on items where expenses are recouped in rates prior to when they can be used as a deduction for tax purposes. An example of this would be the plant removal costs. However, in either case, it is the consumer whose rates reflect the positive and negative consequences of such "loans."

[80] If the customers' discount rate were equal to 9.6 percent, the present value of the revenues paid under flow-through and under normalization would be equal, and the customers, as a group, would be indifferent between the two policies.

[81] Using the notation of the Mathematical Notes to Table 1, the after-tax cost of capital is computed as:

$$h(1-y)d + k(1-d) = (.10)(.60)(.60) + (.15)(.40) = 0.96 \text{ or } 9.6\%$$

[82] The formula used to convert after-tax rates of return to before-tax rates of return is:

$$r_b = \frac{r_a}{(1-y)}$$

where:
r_a = after-tax rate of return
r_b = before-tax rate of return
y = tax rate

policy of normalization reduces rates during the construction period below what they would have been had the utility not engaged in building new plant.[83] From our earlier discussion, this reduction in rates can be viewed either as a "return" on the customer "loan" or as a pass-through of the savings achieved by the utility as a result of having the deferred tax funds as a source of capital.

2. Impact on Cash Flow

In general, normalization tends to improve a utility's cash flow as compared to flow-through when the cash flow is most needed and to decrease it when the need is less.[84] This conclusion follows from an understanding of how the two methods work. For those expenses that are paid by the utility before they are allowed to be collected in rates (Type I timing differences), normalization provides funds (deferred tax debits), in the periods when these expenses are paid and so lessens the impact of those expenses on the utility's cash flow. Subsequently, when the utility is collecting the expenses in rates, normalization reduces the utility's cash flow by permitting a lower than acutal tax allowance in rates (deferred tax credits). Similarly, for expenses that are collected in rates prior to when the utility incurs them (Type II timing differences), normalization reduces cash flow when the expenses are being collected in rates and increases it later when the expenses are being paid by the utility.

By referring to our single transaction AFUDC interest expense example, we can see more precisely why this occurs and, in addition, how the cash flow impact of normalization on utilities can be estimated. Table 2, *supra*, shows calculations of the utility's internal cash flow for each of the three years. Consider the construction period (year zero) when the utility is paying the interest expenses but not collecting them in rates. The utility has incremental cash flow needs of $10 million—the AFUDC interest expense. Normalization helps the utility to meet this cash flow need by providing $4 million in additional cash—the deferred taxes. Flow-through does not. Under flow-through, the net cash outflow arising from the AFUDC interest expense is $10 million. The net cash outflow under normalization is only $6 million. Thus, when the utility must pay for an expense in a period prior to when that expense is recovered in rates, normalization provides a cash inflow (deferred taxes debits) to reduce the net cash outflow of the utility. Further, the cash inflow from deferred taxes is in direct proportion to the incremental cash flow need of the utility since it is equal to the tax rate times the incremental cash flow need created by the timing difference transaction ($10 million × .4 tax rate = $4 million in deferred tax debits).

Now consider the operating life of the plant. In each of these years, the utility's internal cash flow position is improved by the fact that it is collecting $5 million in rates for which it has no current liability. This $5 million is the amortized portion of the $10 million in AFUDC interest expense and is represented in the company's financial statements as the difference between annual book and tax depreciation charges ($55 million–$50 million). During each of these years, normalization reduces the utility's internal cash flow by $2 million reflecting the pass-through to customers of the $4 million in tax benefits that were obtained by the utility during the construction period. Examining the income statement of Table 2, we see that the utility has current (actual) tax expenses of $6.24 and $4.12 million in years one and two, respectively. But the cost of service (Table 1) shows a tax allowance of only $4.24 million in year one and $2.12 million in year two.

The most important conclusion to be drawn from this analysis is that the cash flow provided by normalization is directly proportional to the incremental cash flow needs of the utility as measured by the expense or revenue transaction for which a timing difference arises. Further, this relationship is simple and strightforward. For any period in which a utility must pay an expense which it will collect through rates charged in some other period(s), earlier or later, normalization increases cash flow in the current period by an amount equal to the tax rate times the expense. For any period during which a utility collects in rates for an expense it has to pay in some other period(s), earlier or later, normalization decreases cash flow by an amount equal to the tax rate times the portion of the expense collected in that period. In general, we can say that, under normalization, whenever a utility has a cash flow need created by a timing difference expense or revenue item, the utility's internal cash flow is increased by the tax rate times the amount of the need. Similarly, whenever a utility has "excess" cash due to its collecting monies for expenses or revenues paid in other periods, normalization reduces the size of the "excess" by the tax rate times the amount of the "excess."

This relationship between the internal cash flow generated by normalization (positive or negative) and the cash flow needs arising from timing difference transactions (positive or negative) provides us with a simple and reliable measure of the impact of normalization on a utility's cash flow situation. Using a reasonable estimate of the composite federal/state tax rate of 50 percent, we can say that normalization provides additional cash in the amount of 50 percent of any incremental cash need arising from timing difference transactions and, similarly, reduces any incremental cash "excess" by 50 percent.

3. Impact on Rates of Return

We turn now to a consideration of the impact of normalization on stockholders' rates of return. Our propose here is simply to show that if the rate of return *allowed* on common equity is the same under both policies there is no reason for the rate of return *earned* on common equity to be different. To be more specific, deferred taxes do not accrue to utility stockholders.

In our numerical example in this section, we assumed that the cost of common equity, and thus the allowed rate of return on common equity, was 15 percent under both policy options. Table 2 shows the year-by-year financial results of the utility under each policy when the total revenues realized exactly equal the total revenues allowed (i.e., required revenues per Table 1). Examining Table 2 we find that under neither policy do investors earn more than 15 percent on their incremental common equity investment. In both cases, they earn exactly 15 percent.

Under flow-through, the equity investment at the beginning of years one and two is $44 million and $22 million, respectively. The net income available for distribution to the common equity stockholders is $6.6 million in year one

[83] This assumes a gross-of-tax AFUDC rate method. See Section II. E. 1, *infra*, for a discussion of the effects of the net-of-tax AFUDC rate method.

[84] In our example and in our discussion in this section, we assume the interperiod allocations of costs and revenues under tax regulations are coincident with the cash basis of transactions whenever those regulations differ from the ratemaking allocation policies. This is an oversimplification but not a gross one. Consider the following examples of items covered under the proposed regulation. Construction-related interest, taxes, and pension expenses are all recognized for tax purposes in the periods when they are paid by the utility while, for ratemaking, these expenses are allocated over the life of the associated properties. Regulatory commission expenses are recognized for taxes when incurred (cash basis) but may be spread out over two or more years for ratemaking. Similarly, when IRS regulations permit a shorter deprecation life than regulatory policy, the IRS recognition of the expense is closer to the point when the outlays were made. These are all examples of Type I timing differences. Removal costs, cited earlier as an example of a Type II timing difference, are recognized at the time of cash outlay for tax purposes but over the life of the associated plant for ratemaking. In general, there is a tendency for the interperiod allocations of costs and revenues under tax regulations to more closely follow the cash basis of transactions than the ratemaking interperiod allocations.

and $3.3 million in year two. Investors thus realized a 15 percent rate of return in each year ($6.6 million on $44 million and $3.3 million on $22 million). The comparable statistics under normalization show the same result—15 percent rates of return on common equity ($6.36 million on $42.4 million and $3.18 million on $21.20 million).

The reason that common equity stockholders do not realize higher rates of return on their investments under normalization than under flow-through is because of the deferred tax accounting. Taxes deferred are recorded on the utility's balance sheet in an accumulated deferred tax account that is separate from the common equity accounts. Further, the policy of subtracting accumulated deferred taxes from rate base effectively treats these funds as ratepayer investment and provides ratepayers with a "return" in the form of lower rates. In sum, the taxes deferred under a normalization policy do not accrue to the benefit of utility investors. If they benefit anyone, it is the customers.

Even when the more realistic assumption of a lower cost of common equity to normalized utilities than to flow-through utilities is employed,[85] it does not affect the above conclusions. The results would show realized rates of return equal to those allowed.

C. Multi-transaction Case

So far the analysis has concentrated on the time pattern of the impacts of the proposed rule for a single timing difference transaction. However, much of the controversy surrounding normalization and flow-through is based on the combined effects over time of a group of similar types of timing difference transactions or all timing difference transactions affecting a particular company.

As discussed previously, a necessary characteristic of timing differences, taken individually, is that the difference "reverses or turns around." This reversal or turn around occurs in the case of Type I and Type IV timing differences when the amount of an expense or revenue transaction recognized for tax purposes is *greater* than that for ratemaking in one period and, in some later period(s), the amount of the transaction recognized for tax purposes is *less* than that for ratemaking. For Type II and Type III timing differences, the opposite occurs. For all types, however, the reversal is not complete until the total amount recognized for taxes equals the total amount recognized in rates.

In this section, we consider the implications of combining the effects, over time, of several timing difference transactions either of the same type (e.g., AFUDC interest) or of different types (e.g., AFUDC interest and regulatory commission expenses).

Our purpose is to examine deferrals—both of the expense transactions that give rise to timing differences and of the tax effects resulting from timing differences under a normalization policy. We explain how "continual deferrals" of these expenses and tax effects can be said to exist as long as there are any timing differences for which a complete "reversal or turn around" has not yet occurred. We also explain how "continual deferrals" of taxes under normalization are necessarily associated with "continual deferrals" in the rate collection of the expenses that give rise to the deferred taxes, and how the "deferred expenses" are necessarily of a larger dollar magnitude than the associated "deferred taxes." Finally, we explain the conditions under which rates under normalization may be lower than those under flow-through in the presence of "continual deferrals."

We again assume that the interperiod allocation of expenses for taxes is coincident with the cash basis of the transactions.[86] Expenses are recognized as tax deductions when funds are expended for them. While this is obviously not valid for all timing differences, it does not distort the conclusions of the analysis. The most important reason for employing this assumption is that it permits one to make some important points in a clearer fashion than would otherwise be possible. This assumption allows us to evaluate the multiple transaction case from the perspective of the utility. Specifically, we will proceed by looking first at the effects on the firm of the cost of service treatment of the timing difference transactions. We then consider the effects of the tax deferrals under a normalization policy. Finally, we look at the full cost of service differences in rates (normalization minus flow-through).

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[85] See Section II. D, *infra*, for evidence of this cost of capital differential, and Section III. A. 3, *infra*, for a measure of the effects on rates of cost of capital differentials.

[86] See Sections II.A. and II.B.2, *supra*.

Table 4

Multi-plant Example Illustrating Utility Cash Outlays for AFUDC Interest Expenses Under Varying Conditions of Growth (g)

Plant Number	YEAR 0	1	2	3	4	5	6	7	8	9
Net Outlays of Utility for AFUDC Interest ($ Millions)										
Case 1: g = 0% (constant)										
0	10.00	(5.00)	(5.00)							
1		10.00	(5.00)	(5.00)						
2			10.00	(5.00)	(5.00)					
3				10.00	(5.00)	(5.00)				
4					10.00	(5.00)	(5.00)			
5						10.00	(5.00)	(5.00)		
6							10.00	(5.00)	(5.00)	
7								10.00	(5.00)	(5.00)
8									10.00	(5.00)
9										10.00
Total	10.00	5.00	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-
Case 2: g = 5% (constant)										
0	10.00	(5.00)	(5.00)							
1		10.50	(5.25)	(5.25)						
2			11.02	(5.51)	(5.51)					
3				11.58	(5.79)	(5.79)				
4					12.16	(6.08)	(6.08)			
5						12.70	(6.38)	(6.38)		
6							13.40	(6.70)	(6.70)	
7								14.07	(7.04)	(7.04)
8									14.77	(7.39)
9										15.51
Total	10.00	5.50	.77	.82	.86	.89	.94	.99	1.03	1.08
Case 3: g = 10% (constant)										
0	10.00	(5.00)	(5.00)							
1		11.00	(5.50)	(5.50)						
2			12.10	(6.05)	(6.05)					
3				13.31	(6.66)	(6.66)				
4					14.64	(7.32)	(7.32)			
5						16.11	(8.05)	(8.05)		
6							17.72	(8.86)	(8.86)	
7								19.49	(9.74)	(9.74)
8									21.43	(10.72)
9										23.58
Total	10.00	6.00	1.60	1.76	1.93	2.13	2.35	2.58	2.83	3.12
Case 4: Staggered Construction Using 10% Growth										
0	10.00	(5.00)	(5.00)							
1		11.00	(5.50)	(5.50)						
2			-0-	-0-	-0-					
3				13.31	(6.66)	(6.66)				
4					14.64	(7.32)	(7.32)			
5						-0-	-0-	-0-		
6							17.72	(8.86)	(8.86)	
7								19.49	(9.74)	(9.74)
8									-0-	-0-
9										23.58
Total	10.00	6.00	(10.50)	7.81	7.98	(13.98)	10.40	10.63	(18.60)	13.84

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Table 4 presents data on AFUDC interest expenses for four illustrative cases. The data are based on the AFUDC timing difference example developed in the previous section. However, instead of looking at a single timing difference transaction arising from the construction of a new plant, we now postulate varying levels and types of nominal growth for the utility and look at the combined impact of a number of such transactions.[87] Specifically, we postulate that the utility periodically builds a new plant (whether for growth or replacement) with the same characteristics as the plant in our earlier single transaction example (i.e., one year construction period, two year operating life) but with progressively higher costs.[88] During the construction period of each new plant the utility pays AFUDC interest expenses. It then recoups these expenses in rates charged to customers over the two-year operating life, thus achieving a reversal of the original difference for each transaction.

Table 4 shows the AFUDC interest expenses from the perspective of the utility. The first three cases assume constants growth at 0, 5, and 10 percent, respectively. The fourth case assumes staggered construction activity with the utility paying for the new plants at the 10 percent growth case costs.

The yearly totals for each case represent the utility's net outlays on AFUDC interest. A positive value indicates that the utility pays out more for AFUDC interest than it is allowed to collect in the rates charged to customers for that year. In other words, the recognition of the expense for tax purposes is greater than that for ratemaking. A negative value indicates that the utility receives more in rates than it pays out in AFUDC expenses.

In Case 1 (zero growth), we observe the net outlays on AFUDC interest dropping from $10 million to $5 million to $0 and remaining at $0 thereafter. In part, this is due to the assumption that the utility had no existing plants in year zero. If we had postulated an ongoing utility with existing plants at the same costs, the totals would have been zero throughout. The important point of the case, however, is that there is no "reversal or turn around" on a composite basis. The AFUDC interest on each new project exactly offsets the reversals occurring on each of the old projects, and there is always a balance of unrecovered expenses.

Cases 2 and 3 exhibit similar results. The reasons for presenting both of these cases will become apparent later. As with Case 1, no reversal occurs for either of these cases. In fact, because of the positive growth, we find the utility continually paying out more for AFUDC interest than it is allowed to recoup in rates. The unrecovered balance of AFUDC interest grows.

The results in all three cases may be viewed as "continual deferrals" of the utility's collection in revenues of the AFUDC interest expenses for which it has expended funds. Closer examination provides an understanding as to why these results should be expected. The explanation resides in the way the costs are allocated over time. Examine the component costs for any year. The negative values indicate the amounts of previously incurred expenses that are being recovered from customers during that period. These expenses are associated with the plants that are providing services to the customers during that period. The positive value for that year, however, represents an expense paid by the utility for the construction of a plant that will not serve customers until the next year. If we look to the next year we see that the utility is in fact being allowed to recover that expense from the customers being served at that time. Over the three-year construction/operating life of each plant the utility recovers all the costs associated with the plant; it incurs no loss. For each plant, the reversal occurs and completely offsets the original cost outlay. The reason for the "continual deferral" is that the utility is continually incurring expenses on new plants intended to serve future customers and these expenses are not permitted to be collected from customers until those plants are operating and serving the customers.

Case 4 shows the effects of staggered construction activity. In this case, we find that the utility sometimes collects more in revenues than it pays out on AFUDC interest. This may be referred to as a reversal but it is not the same as that which occurs for a single transaction. For a single transaction the reversal is a one time event. In the Case 4 example, the totals fluctuate between positive and negative over time. Further, in no single year do we find that all of the previously incurred AFUDC interest expenses have been recovered in rates. There is always a balance of unrecovered interest expenses. As a result, even this case can be referred to as one of "continual deferral."

This analysis of combined timing difference transactions has been directed toward the expense item itself rather than the associated tax effects. The purpose has been to show how the interperiod allocation, by regulators, of specific expenses affects utilities. The illustrative examples show clearly that utilities do not recover, in each period, all the expenses for which they actually had to expend funds. Further, the examples show how "continual deferrals" may arise in the customer's payment of (or the company's collection for) expenses that have been incurred by the utility.

Table 4 shows how the interperiod allocation of AFUDC interest results in a continual deferral of these expenses if the evaluation is made with respect to the effects of all such transactions in each year. A similar table can be constructed for the tax effects of timing differences under a normalization policy. Instead of the base transaction having the cash flows of $10 million ($5 million), and ($5 million), it would have $4 million, ($2 million), and $2 million. This would reflect the collection by the utility of $4 million *more* for taxes in rates than it actually paid during the construction period and the collection in rates of $2 million *less* for taxes than it actually paid during each of the operating years. Applying the various growth rates to these numbers and summing for each year would complete the table. The conclusions drawn from such a table would be similar to those we obtained from Table 4. The totals would indicate the net outlays of the utility for taxes. A negative value would indicate that the utility collected more in rates than it paid out in taxes; a positive value would indicate the reverse. For the zero growth case, we would have a time pattern of ($4 million), ($2 million), $0, $0, $0, *et cetera*. For the 5 and 10 percent growth cases, the totals would all be negative indicating that the utility was continually charging customers more for taxes than it was actually paying. For the staggered construction case, the totals would fluctuate like those in Table 4. For all cases, however, the continual deferral of taxes being paid by the utility would coincide with (or "match") the continual deferral of AFUDC interest being collected from customers.

Two points are important here. First is the fact that whenever the utility is deferring the payment of taxes under normalization due to the existence of timing differences, it is also deferring the collection of the associated

[87] For simplicity, we examine the combined impact of a number of transactions of the same type (AFUDC interest). However, one can view each of the transactions considered as a composite of all the different types of timing difference transactions affecting the utility. The conclusions would be the same.

[88] Alternatively, one could postulate a growing number of plants at the same per unit costs.

expenses. The second point concerns the magnitude of the deferred taxes relative to the deferred costs. As long as the tax rate is less than 100 percent, the deferred taxes will always be less than the deferred costs. With a tax rate of 50 percent the deferred taxes would be exactly half the deferred costs.

Table 5 presents data comparable to Table 4, but it addresses the revenue requirements under normalization in relation to those under flow-through for varying growth conditions. The data are derived from the single transaction example of Table 1 with the various growth rates applied for projects commencing in each succeeding year.[89] The totals indicate the net difference in revenue requirements under the normalization and flow-through policies. A positive value indicates that the combined impact of all the timing difference transactions results in higher revenue requirements under a normalization policy than under a flow-through policy. A negative value indicates the reverse.

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[89] The ability to obtain the revenue requirement differences for succeeding projects by the simple multiplication of the prior project's differences by the growth rates is based on the mathematics of the revenue requirement differences. See the discussion of the "base" difference model in Section III, *infra*.

Table 5

Multi-plant Example Illustrating the Difference in Required Revenues Under Normalization Relative to Flow-Through Under Varying Conditions of Growth (g)

Normalization Required Revenues Minus Flow-Through Required Revenues ($ Millions)

Case 1: g = 0% (constant)

Plant Number	YEAR 0	1	2	3	4	5	6	7	8	9
0	6.67	(3.97)	(3.65)							
1		6.67	(3.97)	(3.65)						
2			6.67	(3.97)	(3.65)					
3				6.67	(3.97)	(3.65)				
4					6.67	(3.97)	(3.65)			
5						6.67	(3.97)	(3.65)		
6							6.67	(3.97)	(3.65)	
7								6.67	(3.97)	(3.65)
8									6.67	(3.97)
9										6.67
Total	6.67	2.70	(.95)	(.95)	(.95)	(.95)	(.95)	(.95)	(.95)	(.95)

Case 2: g = 5% (constant)

Plant Number	YEAR 0	1	2	3	4	5	6	7	8	9
0	6.67	(3.97)	(3.65)							
1		7.00	(4.17)	(3.83)						
2			7.35	(4.38)	(4.02)					
3				7.72	(4.60)	(4.23)				
4					8.11	(4.83)	(4.44)			
5						8.51	(5.07)	(4.66)		
6							8.94	(5.32)	(4.89)	
7								9.39	(5.59)	(5.14)
8									9.85	(5.87)
9										10.35
Total	6.67	3.03	(.47)	(.49)	(.51)	(.55)	(.57)	(.59)	(.63)	(.66)

Case 3: g = 10% (constant)

Plant Number	YEAR 0	1	2	3	4	5	6	7	8	9
0	6.67	(3.97)	(3.65)							
1		7.34	(4.37)	(4.02)						
2			8.07	(4.80)	(4.42)					
3				8.88	(5.28)	(4.86)				
4					9.77	(5.81)	(5.34)			
5						10.74	(6.39)	(5.88)		
6							11.82	(7.03)	(6.47)	
7								13.00	(7.74)	(7.11)
8									14.30	(8.51)
9										15.73
Total	6.67	3.37	.05	.06	.07	.07	.09	.09	.09	.11

Case 4: Staggered Construction Using 10% Growth

Plant Number	YEAR 0	1	2	3	4	5	6	7	8	9
0	6.67	(3.97)	(3.65)							
1		7.34	(4.37)	(4.02)						
2			-0-	-0-	-0-					
3				8.88	(5.28)	(4.86)				
4					9.77	(5.81)	(5.34)			
5						-0-	-0-			
6							11.82	(7.03)	(6.47)	
7								13.00	(7.74)	(7.11)
8									-0-	-0-
9										15.73
Total	6.67	3.37	(8.02)	4.86	4.49	(10.67)	6.48	5.97	(14.21)	8.62

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For the zero growth case, we find that normalization yields higher revenue requirements during the first two years but lower revenue requirements from then on. Similar results are obtained with a 5 percent growth factor. The difference between these two cases is that, after the first two years, the latter shows a widening difference over time while the former shows a constant difference.

In Case 3, with the growth rate at 10 percent, we find that normalization required revenues are above flow-through required revenues in all years and that after year 3, the gap widens over time. A prerequisite for this occurrence is reasonably steady growth at this high level.

Case 4 illustrates what happens when growth is not steady. In this case, normalization required revenues are higher than those produced by flow-through in some periods and lower in others. The implication is that while a firm may be growing at a reasonably high rate, if its construction activity should drop off, even for one year, normalization rates may fall below flow-through rates.

To summarize, deferrals of taxes due to normalization for timing differences can only occur when the collection in rates of the costs that gave rise to those tax defferals are also continually deferred. Further, the non-tax costs for which recovery is deferred are of a higher dollar value than the associated taxes that are deferred, given a tax rate of less than 100 percent. It is inconsistent to set rates to recover only the actual taxes paid in each period while simultaneously recovering less than the actual amount of other expenses paid in each period. Finally, from a pragmatic perspective, the overall impact on rates paid by consumers under the alternative policies of flow-through and normalization depends critically on the type and level of growth that each utility experiences in the future. Other things being equal, [90] low steady growth produces the result that normalization rates tend to be lower than flow-through rates while high steady growth produces the opposite result. Fluctuating growth results in a mixture over time of normalization rates above flow-through rates and normalization rates below flow-through rates.[91]

The generality of these conclusions should be underscored. The example of AFUDC interest expenses can easily be viewed as a composite of a variety of different timing difference transactions. Since Type I timing differences appear to be the most common and most significant, the impact of this type has been emphasized. While the assumptions relied on in the illustrative examples (life of the plant, rates of return, etc.) may not be wholly realistic, the qualitative conclusions would not change if more realistic assumptions had been used.

D. Cost of Capital Effects

The discussion so far has assumed that the cost of capital is the same for utilities using normalization as for those using flow-through. Various studies, however, have found evidence that the cost of capital is higher to utilities employing flow-through than it is to utilities using normalization.[92]

A number of theoretical arguments have been advanced to support the hypothesis of a normalization/flow-through cost of capital differential. First, the predominant effect of the timing differences affecting utilities is a reduction in current tax liability and an increase in future tax liability. Normalization provides a reserve of funds to pay the future tax liabilities. Under flow-through, however, utilities will have to seek additional rate increases to meet the higher future tax payments. Difficulties that may arise in obtaining the necessary rate increases create the additional risk which, in turn, increases the returns that lenders and investors require from flow-through utilities. This argument is cited most frequently. Implicit in this argument, however, is the assumption that rates under normalization will fall below rates under flow-through during the time frame considered relevant to investors. Otherwise there would be no necessity for rate increases under flow-through. However, under plausible growth and/or inflationary conditions for the electric utility industry, this reversal in the normalization/flow-through rate difference may not occur in the foreseeable future so that the assumption of the above argument may not hold.[93]

A second argument used to support the normalization/flow-through cost of capital differential is that regulatory commissions that require flow-through treatment for the tax effects of timing differences tend to be viewed by investors as having a pro-consumer orientation relative to those commissions that permit normalization. From an investor's perspective, this bias may increase the risk that a flow-through utility may not earn adequate returns over time. This argument is one of correlation rather than causality. The additional risk is not due to factors inherent in the method by which timing differences are handled. Rather it is based on the perception, correct or not, that those commissions that require flow-through are also the ones that give inadequate returns, allow attrition to erode earnings, and take other actions that benefit ratepayers at the expense of stockholders.

A third argument is that, when compared to flow-through, normalization stabilizes the cash flow of utilities. Normalization more closely matches cash inflows with cash outflows. It provides additional cash inflow (with deferred tax debits) when an expense is recognized for tax purposes but not for rates. Conversely, it reduces cash inflow (with deferred tax credits) when an expense is permitted to be included in rates but is not recognized for taxes. Since, in general, the recognition of expenses for taxes more closely coincides with the cash basis of transactions than the recognition for ratemaking, normalization reduces the fluctuations in utilities' cash flow and thereby reduces the risks associated with utilities' ability to meet short-term financial obligations.

Finally, a utility's external capital needs are less under normalization than under flow-through. As can be seen from (3) above, normalization increases the availability of cash from internal sources (deferred tax debits) when it is needed. Thus, the firm's external capital needs are less. If institutional constraints are such that the price a utility pays for capital increases with the size and frequency of its demands, then flow-through utilities which require more external capital will have a higher cost of capital.

For whatever reason, to the extent that flow-through companies are perceived to be more risky than normalized companies, one expects some combination of the following

[90] The growth rates referred to here are nominal growth rates, i.e., they include the effects of inflation. The cost of capital (allowed rate of return) also is a function of inflation. The inflation rates implied by each should be consistent. They are not in these examples since the main purpose was to show the effects of different growth rates irrespective of the relative magnitude of the real and inflationary components of these rates.

[91] See Section III.A.3, *infra*.

[92] These studies were concerned primarily with the application of normalization and flow-through to accelerated depreciation, a timing difference that is not within the scope of the proposed rule. See, Arthur Anderson and Co. (1977), Berndt, Sharp and Watkins (1979), Brigham and Pappas (1970), Corey (1979), Mlynarczyk (1969), O'Donnell (1965), and O'Donnell (1968).

[93] See, e.g. Section III.A.3, *infra*.

effects to be observed of flow-through companies when compared with normalized companies:

(1) Higher cost of debt;

(2) Higher cost of preferred equity;

(3) Higher cost of common equity; and/or

(4) Lower leverage (less use of debt relative to equity in financing operations).

All of these effects have been observed in the above-referenced studies.

In addition, some recent data supporting the conclusion that flow-through ratemaking results in higher capital costs than normalization are presented in Tables 6 and 7. These data tend to indicate that flow-through utilities cannot obtain as much debt financing as can normalized utilities. In each of the years 1974 through 1978, the debt ratio of flow-through companies is (slightly) less than that for normalized companies. In addition, flow-through utilities appear to pay higher interest rates on the debt they do obtain since debt cost is inversely related to bond ratings and interest coverage (times interest earned) That flow-through companies have a higher cost of common equity is indicated by the consistently lower market-to-book and price-earnings ratios.

Since these comparative data relate primarily to the normalization or flow-through of accelerated depreciation timing differences, definitive statements on the magnitude of the cost of capital differentials arising from the currently proposed rule are not feasible. It is reasonable to conclude, however, that capital costs will be lower under the normalization policy contemplated in the proposed rulemaking.

Table 6.—*Selected Comparative Financial Data for Normalized and Flow-Through Utilities, 1974–78*

	79 Normalized companies	21 Flow-Through companies
Times interest earned before FIT:		
1974	2.78	2.20
1975	3.02	2.37
1976	3.22	2.63
1977	3.25	2.71
1978	3.09	2.54
Average	3.07	2.49
Debt ratio (percent):		
1974	57.3	56.3
1975	55.2	54.4
1976	53.4	53.0
1977	53.0	52.3
1978	52.3	51.1
Average	54.2	53.4
Market-to-book ratio:		
1974	.68	.55
1975	.92	.78
1976	1.05	.92
1977	1.02	.96
1978	.87	.83
Average	.91	.81
Price-earnings ratio:		
1974	6.59	5.28
1975	8.26	7.20
1976	9.32	8.12
1977	9.01	8.57
1978	7.66	7.22
Average	8.17	7.28

Source: Dean Witter Reynolds Inc., "100 Largest Utility Companies: Comparative Financial Data for the Years 1974–78", August 1979.

Table 7.—*Electric Utility Bond Rating Distributions, 1977–78*

[In percent]

S&P bond rating	1977 Normalized companies (91)	1977 Flow-through companies (29)		1978 Normalized companies (84)	1978 Flow-through companies (19)	
AAA	3	0		4	0	
AA/AA–	40	10	55	36	16	48
A+/A	35	45		37	32	
A–/BBB+	8	28		11	16	
BBB/BBB–	13	17		13	37	
Lower	1	0		0	0	
Total	100	100		100	100	

NOTE.—Numbers after column titles indicate number of companies in sample. Columns may not sum to totals due to rounding.

Source: Standard & Poor's "Utility Compustat II" Data Base, June, 1979.

E. Other Considerations

1. *Gross-of-Tax vs. Net-of-Tax AFUDC Rate Methods.*—Under normalization, there are two general methods currently permitted to be used in accounting for AFUDC on new plant construction—the gross-of-tax and net-of-tax AFUDC rate methods.[94] The treatment of the timing difference arising from the interest expense portion of AFUDC is affected by the choice of these methods with the result that the effects on rates are not the same. In particular, the net-of-tax methods fails to pass on to customers, in lower rates, the full cost savings realized by utilities during the construction period of plant additions.

Under both methods, AFUDC is capitalized and included in the value of plant going in service. With the *gross-of-tax method,* AFUDC is accrued during the plant construction period using a before-tax AFUDC rate. At the same time, deferred taxes are accrued from the deduction of the interest expense portion of the AFUDC on a current basis. The deferred taxes provide cash inflow to the utility and lessen the need for financing. The savings achieved by this are passed on to customers by deducting accumulated deferred taxes from rate base. Rates during both the construction period and operating life thus reflect the pass-through of the savings realized by the utility in having the use of the deferred tax-derived funds for its financing.

In contrast, the *net-of-tax method* accrues AFUDC at the lower, net-of-tax AFUDC rate. This lower rate is intended to achieve the same result as the gross-of-tax method by reducing the amount of AFUDC capitalized in rate base by the tax effects (benefits) of the interest portion of the AFUDC. However, the result is not the same since there are no accumulated deferred taxes or anything comparable that can be used to reduce rate base during the period of new plant construction.

If we assume that there is no compounding of AFUDC (i.e., if no interest on interest is permitted), then the value of the rate base of a new plant when it goes into operation under the net-of-tax method will equal the value of the rate base less accumulated deferred taxes under the gross-of-tax method. As a result, the impacts of the two methods on rates would be the same during the operating life of a plant. A difference, however, occurs during the construction period. Under the gross-of-tax method, accumulated deferred taxes reduce the rate base for existing plant and thus reduce rates. Under the net-of-tax method there are no deferred taxes so that rates during the construction period are higher. Thus, the time value of the customer's "loan" during construction is lost to customers under the net-of-tax method.

The use of compounding has the effect of minimizing the revenue differential between the gross-of-tax and net-of-tax methods but does not eliminate it. Because the net-of-tax AFUDC rate is lower than the gross-of-tax rate, less AFUDC is accumulated through compounding under the net-of-tax method. However, this compounding effect is substantially smaller than the previously discussed rate base deduction effect.

[94] See, Order No. 561 and 561–A, Order Adopting Amendment to Uniform Systems of Accounts for Public Utilities and licenses and for Natural Gas Companies, and Order Denying Applications for Rehearing and Clarifying Prior Order, in Docket No. RM75–27, issued February 2, 1977 and August 1, 1977; Order No. 530–A, *supra.* The Commission has suggested that utilities follow whichever method is approved for retail rates in their wholesale filings.

2. *Special Projects* [95].—Special projects present situations where rates will be lower under normalization than under flow-through. Special projects are companies formed solely to finance and operate a single project, such as the Alaskan Natural Gas Transmission System (ANGTS). Under flow-through, tax benefits from construction-period timing differences would not be passed on to customers since there would be no sales during that period and therefore no rates through which the customers could realize the benefits. Normalization, however, would cause deferred tax debits to be accumulated during the construction period which would later be used to lower rates over the operating life.

During the project's construction period, significant costs such as AFUDC interest are incurred and may be recognized as an expense in determining tax liability. Because there are no sales and therefore no income is generated during this period, the project has negative taxable income, i.e., it is in a tax loss position. The owners can usually use this tax loss to offset other income and thereby lower their overall tax liability. In other words, there is usually no reason to carry forward tax losses to the operating phase of the project.

The costs we are considering here, however, are costs that create timing differences. By writing off these costs for taxes during the construction period, the participating firms do not have the opportunity to use them as tax deductions during the operating lives of the projects when revenues to cover the specified costs are collected. Their tax liability during the operating life will, as a result, be higher than it would have been had those costs been deductible and used to determine tax liability during the operating life.

Using our numerical example in Section II. B., we can compare the effects of the flow-through and normalization methods on required revenues for a special project.

Required Revenues

Year	0	1	2
Normalization	0	$71.96	$63.48
Flow-through	0	75.93	67.13
Difference	0	(3.97)	(3.65)

[95] The analysis in this section also would apply to newly-formed companies with more than one project if they experience a development period during which they realize timing difference-derived tax benefits but make no sales and therefore have no rates in which to reflect those benefits.

The firm has a $10 million tax deduction during year zero arising from the AFUDC interest expense. Using this deduction in its tax filing as an offset to other income, the owners are able to realize a tax benefit of $4 million during year zero. Under flow-through, this tax benefit is lost to customers.

For an ongoing utility, flow-through would have lowered required revenues by $6.67 in year zero to pass the tax benefits arising from the AFUDC interest to consumers. For a special project, however, since there are no sales in year zero, there are no rates that would do this. During the operating years, however, setting the tax allowance equal to taxes actually paid (flow-through) results in the same revenue requirements for a special project company as for an ongoing utility.

In contrast, normalization flows the tax benefits of the AFUDC interest to consumers during the operating years. It has no effect on required revenues during year zero for an ongoing utility so that nothing is lost to customers of a special project.

This analysis should be qualified. If a company is unable to utilize all deductions on a current basis, carryforward and carryback provisions of the tax laws may be used. To the extent that construction period deductions are carried forward for use during the operating life of a plant, a flow-through policy would pass the tax benefits of these deductions to customers.

A second consideration relates to projects undertaken by a coporate entity or group of corporate entities that are permitted to deduct expenditures made on a "special project" in a consolidated tax filing. If a regulatory agency permits rates to reflect the consolidated filing, under flow-through current customers of the jurisdictional corporate entity or entities will receive some portion of the benefits that would otherwise have been lost.

III. Empirical Analyses of the Impact of Normalization on Rates for Selected Timing Differences

A. Depreciation-Related Timing Differences

There are three sources of timing differences relating to the amount of depreciation claimed in any year for tax purposes and the amount allowed in ratemaking:

(1) *Method Differences.*—These are differences in the method used to compute annual depreciation charges for taxes and ratemaking that create timing differences. Regulatory agencies generally require the use of straight-line depreciation in setting rates. For tax purposes, however, utilities are permitted to use various accelerated depreciation methods. The result is annual tax depreciation charges greater than ratemaking depreciation charges in the early years of a plant's life and the reverse in later years. Over the life of a plant, however, the sum of the annual depreciation charges for ratemaking and taxes is the same. The faster writeoff of depreciation for tax purposes means that the utility pays lower taxes in the early years but higher taxes in the later years of the plant's operating life.

(2) *Base Differences.*—Certain costs are spread over the life of a plant as part of depreciation for ratemaking purposes but are written off when paid for tax purposes. The ratemaking policy of spreading such expenses over the life of a plant results in a depreciation base for ratemaking that is larger than that for taxes; hence, the phrase "base difference." Examples of expenses that give rise to base differences are construction-related taxes, pensions and interest expenses and plant removal costs.

(3) *Life Differences.*—When the tax life of an asset is different from its ratemaking (or book) life, a timing difference results. Even if straight-line depreciation is used for both ratemaking and taxes and the depreciation "base" is the same, the ability to depreciate an asset for tax purposes over a different period of time (tax life) than that permitted for ratemaking (ratemaking or book life) results in annual tax depreciation charges over the tax life. However, over the remaining ratemaking life, ratemaking depreciation charges will exceed tax depreciation charges (since the latter will be zero).

The treatment of timing differences arising from depreciation method differences—listed as (1) above—was dealt with in Commission Order No. 404. It is not an issue in the current proceeding and its impact is not evaluated in this report.

The treatment of base and life differences is an issue in this proceeding. To evaluate the impact on rates of applying normalization to the construction-related the impact on rates of applying normalization to the construction-related base differences and the life differences, staff developed two simulation models. The models as well as the data used for each industry are described below.

Removal cost base differences, also covered in the current proceeding, are less amenable to quantitative evaluation. A separtate section, below, discusses this item and addresses the

problem involved in attempting to quantify its impact.

1. The Base and Life Difference Models

To evaluate the construction-related "base" differences and the "life" differences, staff developed two simulation models designed to answer the question: "What additional revenues would be required by utilities in each year of the future if they normalized rather than flowed through the tax consequences (or effects) of new base (and life) timing differences?" A positive answer in any year means that normalization results in higher required revenues (and thus, rates) than flow-through; a negative answer indicates the reverse.

For discussion purposes, the "impact" of normalization shall refer to the revenues required under normalization *minus* the revenues required under flow-through. Thus, an increase (decrease) in the impact refers to an increase (decrease) in required revenues under normalization relative to required revenues under flow-through.

The models address the rate impact question only for the base and life timing difference transactions that arise in the initial year or later. Timing difference transactions that arose in previous years, the tax effects of which may have been flowed through or normalized, are ignored.

From an overall perspective, each model is based on an evaluation of the differences over time between normalization and flow-through revenue requirements for the incremental plant additions made by a firm (or industry) under steady growth conditions. The sum of plant additions in each year is considered a single, composite plant addition which generates effects on the normalization/flow-through revenue requirement differential over its construction period and service life. As one moves from year to year, successive composite plant additions and their effects on the revenue requirement differential are considered so that, in period 2 there are two composite plant additions having effects on this revenue requirement differential; in period 3, there are three plant additions; etc. This process can be observed in Table 7, *supra*.

Several simplifying assumptions were used in deriving the model. They are:

(1) Rates are adjusted annually to permit the utility to maintain its earned return at the level allowed. In other words, utilities are assumed to realize their required revenues in each year. Some such assumption is essential to any attempts to forecast events.

(2) Gross plant additions grow at a constant annual rate, in nominal terms, over the forecast period. In fact, there are fluctuations in the growth of gross plant additions at the firm level and, to a lesser extent, at the industry level. The effect of this assumption, however, is simply to smooth out the time pattern of the impacts. [96]

(3) Capitalized expenses (construction-related interest, pensions and taxes) incurred in each year are a constant percent of gross plant additions in the following year. This assumption follows from: a constant growth in gross plant additions; a constant relationship between the capitalized expenses and construction expenditures; and either (a) a one-year construction period (used in the actual derivation of the models) or (b) a constant mix in the construction characteristics of each year's gross plant additions. [97]

(4) The tax and book lives of the composite plant additions, the tax rate, and the costs of capital are constant over the forecast period.

These simplifying assumptions are necessary to provide manageable models with which to evaluate the impact of the proposed rule. It is doubtful that more detailed and complex modeling would yield significantly different results.

As both models are derived in essentially the same manner, the base difference model can be used to illustrate the method of derivation and the mechanics of operation. The starting point is the evaluation of the normalization/flow-through revenue requirement differentials over the construction period and operating life of a single plant addition. This is illustrated in Table 1, *supra*, Section II.B.1, for the simple example of a plant with a one-year construction period and two-year operating life. That example considered only the AFUDC interest expense "base" difference. However, one can just as easily view the $10 million AFUDC interest in that example as the sum of construction-related interest, tax, and pension expenses. The mathematics underlying the required revenue differential calculations of Table 1 are provided in the Mathematical Notes to Table 1. [98]

Growth is introduced into the analysis by hypothesizing new composite plant additions being constructed and going into service in successive years at higher dollar values, reflecting both real growth and higher unit costs due to inflation. Proceeding with the above referenced example and assuming a nominal growth rate in plant additions of 5 percent per year, it is hypothesized that $105 million ($100×1.05) would be spent on new plant construction in year one, AFUDC interest of $10.5 million ($105×.10) would accrue, and the value of the plant going into rate base at the beginning of year two would be $115.5 million. Table 5, *supra*, Section II.C., illustrates the net cost of service effects of this process with the interest expense example and assuming various growth rates. A mathematical representation is provided in Table 8.

For any year, the impact of normalization applied to base differences, defined as the excess of normalization over flow-through required revenues for new plant additions, can be determined by summing the values in the column of a matrix similar to those of Tables 5 and 8 for the desired year. The actual base and life difference models used for the impact analysis (shown in Table 9) are generalizations of the column sums of matrices similar to Table 8 where plant additions have an M year tax life and an N year book life.

In the above explanation of how the base difference model was derived, it was assumed that the cost of capital is the same for normalization and flow-through. In the models presented in Table 9, however, allowance is made for the possibility of different capital costs. This is represented by the fourth component of the base difference model and the fifth component of the life difference model. They are derived in the same manner as the other components.

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[96] See Section II.C, *supra*, for a demonstration of how growth fluctuations can cause normalized required revenues to be sometimes above and sometimes below flow-through required revenues.

[97] This latter construction mix assumption encompasses a constant dollar mix of plant additions and a constant time pattern in the construction expenditures for each type of plant.

[98] Note especially equations (7) through (12) for mathematical representations of the components leading to the differences in the normalization and flow-through revenue requirements.

Table 8

Base Difference Model - Illustration with Service Life (N) of 2 Years

PLANT NUMBER (i)	Year (t) 0	1	2	3	4	5	...
0	$(\frac{1}{1-u})X_0$	$-(\frac{1}{1-u})(\frac{X_0}{2})-vX_0$	$-(\frac{1}{1-u})(\frac{X_0}{2})-v(1-\frac{1}{2})X_0$				
1		$(\frac{1}{1-u})X_1$	$-(\frac{1}{1-u})(\frac{X_1}{2})-vX_1$	$-(\frac{1}{1-u})(\frac{X_1}{2})-v(1-\frac{1}{2})X_1$			
2			$(\frac{1}{1-u})X_2$	$-(\frac{1}{1-u})(\frac{X_2}{2})-vX_2$	$-(\frac{1}{1-u})(\frac{X_2}{2})-v(1-\frac{1}{2})X_2$		
3				$(\frac{1}{1-u})X_3$	$-(\frac{1}{1-u})(\frac{X_3}{2})-vX_3$	$-(\frac{1}{1-v})(\frac{X_3}{2})-v(1-\frac{1}{2})X_3$	
4					$(\frac{1}{1-u})X_4$	$-(\frac{1}{1-u})(\frac{X_4}{2})-vX_4$	...
5						$(\frac{1}{1-v})X_5$	...
...							...

Some definitions:

X_i = Deferred taxes arising from expenses capitalized during construction period of plant i

v = "Pretax" overall rate of return

$= [h \cdot d + \frac{k \cdot (1-d)}{(1-u)}]$

See Mathematical Notes to Table 1 for definitions of other variables.

Table 9

Base and Life Difference Models

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Base Difference Model

$$RR_t^n - RR_t^\delta = \left(\frac{1}{1-y}\right) X_t \qquad (1)\ \text{deferred tax debit effect}$$

$$- \sum_{i=\max[t-N,0]}^{t-1} \left(\frac{1}{1-y}\right) \frac{X_i}{N} \qquad (2)\ \text{deferred tax credit effect}$$

$$- \sum_{i=\max[t-N,0]}^{t-1} y^n \left[1 - \frac{(t-i-1)}{N}\right] X_i \qquad (3)\ \text{rate base deduction effect}$$

$$- \sum_{i=\max[t-N,0]}^{t-1} (y^\delta - y^n) \left[1 - \frac{(t-i-1)}{N}\right] BB_i \qquad (4)\ \text{cost of capital differential effect}$$

with convention that $\sum_{i=0}^{b} = 0$ for $b<0$

Life Difference Model

$$RR_t^n - RR_t^\delta = \sum_{i=\max[t-M,0]}^{t-1} \left[\frac{1}{1-y}\right] Z_i \qquad (1)\ \text{deferred tax debit effect}$$

$$- \sum_{i=\max[t-N,0]}^{\max[t-M-1,-1]} \left(\frac{1}{1-y}\right) \left(\frac{1}{N-M}\right) MZ_i \qquad (2)\ \text{deferred tax credit effect}$$

$$- \sum_{i=\max[t-M-1,0]}^{t-2} y^n [t-i-1] Z_i \qquad (3)\ \text{rate base deduction effect during tax life}$$

$$- \sum_{i=\max[t-N,0]}^{\max[t-M-2,-1]} y^n \left[1 - \frac{(t-M-i-1)}{N-M}\right] MZ_i \qquad (4)\ \text{rate base deduction effect during remaining book life}$$

$$- \sum_{i=\max[t-N,0]}^{t-1} (y^\delta - y^n) \left[1 - \frac{(t-i-1)}{N}\right] BB_i \qquad (5)\ \text{cost of capital differential effect}$$

with convention that $\sum_{i=0}^{b} = 0$ for $b<0$

See next page for variable definitions.

Table 9

Page 2 of 2

Base and Life Difference Models (continued)

Definitions:

BB_0 = Gross book value of plant built in year zero and entering rate base in year 1.

BB_i = Gross book value of plant i, constructed in year i and added to rate base in year $i+1$.

$= BB_{i-1}(1+g)$

BT_i = Gross tax value of plant i.

$= (1-c)BB_i$

C_i = Costs incurred during construction period of plant i, expensed for tax purposes but capitalized in the cost of plant for book and ratemaking purposes.

$= cBB_i$

M = Tax life of plant additions.

N = Book life of plant additions.

RR_t^f = Required revenues under flow-through, period t.

RR_t^n = Required revenues under normalization, period t.

X_i = Taxes deferred during construction period of plant i due to "base" timing difference expenses.

$= yC_i$

y^f = "Pretax" overall rate of return (or cost of capital) under flow-through.

$= h''\cdot d'' + \frac{j''\cdot p''}{(1-y)} + \frac{k''\cdot e''}{(1-y)}$

y^n = "Pretax" overall rate of return (or cost of capital) under normalization.

$= h'\cdot d' + \frac{j'\cdot p'}{(1-y)} + \frac{k'\cdot e'}{(1-y)}$

Z_i = Taxes deferred in each year of tax life (M) due to difference in tax and book depreciation lives.

$= yBT_i\left(\frac{1}{M} - \frac{1}{N}\right)$

c = Capitalized expenses as a fraction of gross plant additions (book basis).

y = Tax rate.

h', h'' = Cost of long-term debt under normalization and flow-through, respectively.

j', j'' = Cost of preferred stock under normalization and flow-through, respectively.

k', k'' = Cost of common equity under normalization and flow-through, respectively.

d', d'' = Debt ratio under normalization and flow-through, respectively.

p', p'' = Preferred stock ratio under normalization and flow-through, respectively.

e', e'' = Common equity ratio under normalization and flow-through, respectively.

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The base and life timing differences are evaluated separately to keep the analyses as simple as possible. These separate results, however, can be summed to obtain the combined impact of the two sources of timing differences. To see the basis for adding these impacts, consider a new plant with a five year (book) operating life. The cost of the plant consists of $100 million in construction expenses plus $10 million in expenses that are deducted for tax purposes during the construction period (e.g., taxes, pensions, and interest). When the plant goes into rate base, therefore, it has an initial value of $110 million. The $10 million in capitalized expenses constitute the base difference. The amount depreciable for tax purposes is only $100 million since the capitalized expense deductions of $10 million were used during the construction period. Suppose also that the tax authorities permit the company to depreciate the plant over a four-year period for tax purposes while regulatory authorities maintain the use of a five-year operating life for depreciation. The annual depreciation charge for tax purposes will therefore be $25 million for each of 4 years ($100 million ÷ 4). For ratemaking (and financial statements), however, the depreciation charge will be $22 million for each year of the five-year service life ($110 million ÷ 5).

The following table presents the combined effects of the base and life differences:

[Dollars in millions]

Item	Year 1	2	3	4	5
Base difference:					
Book depreciation	$22	$22	$22	$22	$22
Tax depreciation	25	25	25	25	0
Difference	(3)	(3)	(3)	(3)	22

But these effects can be separated as follows:

[Dollars in millions]

Item	Year 1	2	3	4	5
Base difference:					
Book depreciation	$22	$22	$22	$22	$22
Tax depreciation	20	20	20	20	20
Difference	2	2	2	2	2
Life difference:					
Book depreciation	20	20	20	20	20
Tax depreciation	25	25	25	25	0
Difference	(5)	(5)	(5)	(5)	20

Note that the sums of the separately calculated differences for each year are equal to the differences arrived at by looking at the combined effect. It is this result that enables us to evaluate the two sources of timing differences separately.[1]

2. Data Used in Impact Analyses

Table 10 lists the data used to estimate the impact of the proposed normalization rule on rates for the base and life timing differences. This section explains the bases for the data.

Growth Rate in New Plant Additions(g) [99]
Gas.—5–10 percent
Electric.—7–14 percent

This is the most critical parameter in both models since it is the primary determinant as to whether normalization rates will eventually fall below flow-through rates. Because of this and the high degree of uncertainty surrounding estimates of future long-term growth in the two industries, a range of estimates was used.

The growth rate range for the gas pipeline industry is based on zero percent real growth together with a 5 to 10 percent range for plausible future long-term average inflation. With gas supplies relatively static, future expenditures on plant additions are expected to be primarily for replacements to maintain the existing plant capacity. This hypothesized zero real growth is consistent with the recent experience of Major Class A and B Natural Gas Pipelines and with the American Gas Association (AGA) forecasts of gas utility industry expenditures on "Utility and Pipeline Construction and Maintenance." [100]

Table 10.—*Summary of Data Used in Impact analysis*

	Natural gas pipelines	Electric utilities
Growth rate in new plant	Low: 5 percent. High: 10 percent.	Low: 7 percent. High: 14 percent.
Base year (1976) gross plant additions(BB_b).	$596 million	$12,706 million.
Capitalized expenses as a percent of gross plant additions (c).	4 percent	11 percent.
Composite straight-line book life (N).	23 years	31 years.
Composite straight-line tax life (M).	22 years	28 years.
Capital structure:		
Debt ration (d)	.45	.51.
Preferred stock ratio (p)	.05	12.
Common equity ratio (e)	.50	.37.
Capital costs—5 percent inflation:		
Debt cost (h)	7 percent	7 percent.
Preferred stock cost (l)	7 percent	7 percent.
Common equity cost (k)	12 percent	11 percent.
Capital costs—10 percent inflation:		
Debt Cost (h)	12 percent	12 percent.
Preferred Stock Cost (l)	12 percent	12 percent.
Common equity cost (k)	17 percent	16 percent.
Tax rate (y)	50 percent	50 percent.
Base year (1976) Total required revenues.	$14,748 million.	$50,553 million.

In real (1968) dollar terms, natural gas storage and transmission plant additions by major Class A and B pipelines for the period 1968–1978 are as follows ($ millions):[101]

Year	Plant additions
1968	$1,156.8
1969	1,315.1
1970	830.3
1971	571.0
1972	441.8
1973	379.4
1974	251.0
1975	323.0
1976	161.5
1977	290.6
1978	392.6

The current dollar values of natural gas transmission and storage plant additions by major Class A and B natural gas pipelines are obtained from *Statistics of Interstate Natural Gas Pipeline Companies-1978* (U.S. Department of Energy, Energy Information Administration, October 1979). Handy-Whitman construction cost indices are obtained from *The Handy-Whitman Index of Public Utility Construction Costs: Bulletin No. 109* (Baltimore, Md.: Whitman, Reguardt and Associates, 1979).

These data show a declining trend in the real value of plant additions from 1968 to about 1973. Since 1973, however, the real value of plant additions has

[1] Alternatively, this result can be shown mathematically:

$$D_b - D_t = d_b \times B_b - d_t \times B_t$$
$$= (d_b - d_t) B_t + d_b (B_b - B_t)$$
$$= \{\text{Life}\} \{\text{Base}\}$$
$$\text{(Difference)} + \text{(Difference)}$$

where:

D_b = Book depreciation charge
D_t = Tax depreciation charge
d_b = Book depreciation rate
d_t = Tax depreciation rate
B_b = Book base
B_t = Tax base

[99] This growth rate includes the capital expenditures for replacement of existing capacity.

[100] See American Gas Association, "A Forecast of Capital Requirements of the U.S. Gas Utility Industry to the Year 2000," April 20 1979. Exhibit 1 shows expected overall capital expenditures for "Utility and Pipeline Construction and Maintenance" of approximately $4 billion annually through the year 2000 (in 1978 dollars). While these statistics are not specific to interstate natural gas pipelines, they are supportive of zero real growth in natural gas pipeline operations.

[101] These data are computed as follows:

(1) multiply current dollar value of storage plant additions by the national average of the Handy-Whitman Indices of Storage Plant Construction Cost (converted to base 1968);

(2) multiply current dollar value of transmission plant additions by the national average of the Handy-Whitman Indices of Transmission Plant Construction Costs (converted to base 1968); and

(3) sum the results of (1) and (2) for each year.

remained relatively static, averaging $300 million annually.[102]

A range of 2 to 4 percent real growth is projected for the electric utility industry based on growth in kilowatt capacity as estimated by various studies. The average annual compound growth rates in the forecasts of generating capacity in these studies may be summarizied as follows:

Author	Time period covered	Average compound growth rate (percent)
Department of Energy (DOE) [1]	1977–1995	4.0
Electrical World (EW) [2]	1978–1995	3.3
Data Resources, Inc. (DRI) [3]	1978–2000	2.2

[1] U.S. Department of Energy (DOE), Energy Information Administration, *Annual Report to Congress 1978*, Volume 3, p. 268.
[2] "30th Annual Electrical Industry Forecast, *Electrical World (EW)*, September 15, 1979, p. 80.
[3] Data Resources, Inc. (DRI), "DRI Annual U.S. Energy Model," computer printout dated December 4, 1979.

The real growth rates hypothesized for each industry were adjusted to reflect a range of 5 to 10 percent for plausible future average inflation rates.[103]

Industry	Real growth (rate (g_r))	Inflation rate (p)	Nominal growth rate (g_n) [1]
Gas	0	.05	.05
	0	.10	.10
Electric	.02	.05	.07
	.04	.10	.14

[1] $g_n = (1 + g_r)(1 + p) - 1$.

Base Year (1976) Gross Plant Additions (BB_o)
Gas—$ 596 million.
Electric—$12,706 million.

This parameter works in a similar manner in each model. It is the base upon which the growth rates are applied and is thus a primary determinant of the level of the projected impacts in future years. All other parameters held constant, an increase in the value of this parameter causes an increase in the projected impact of normalization for each year in both models.

Because of the importance of this parameter on the level of the impacts, the base year should not be atypical. Available data show fluctuations in gross plant additions for both industries over recent years due, presumably, to demand and financial market uncertainties as well as to construction delays. Consequently, the average of gross plant additions for the three-year period 1975 to 1977 was used as the base year 1976 gross plant additions.

For the electric utility industry this parameter corresponds to "Total Electric Plant Additions" for all Class A and B electric utilities as reported in Section VII (Utility Plant) of *Statistics of Privately Owned Electric Utilities* [104] for selected years. For the natural gas pipeline industry, the parameter equal the additions to natural gas storage and transmission plant for all Class A and B natural gas pipelines as reported in Section VII (Gas Utility Plant) of the *Statistics of Interstate Natural Gas Pipeline Companies*.[105]

Capitalized Expenses as a Percent of Gross Plant Additions (c)
Gas: 4 percent
Electric: 11 percent

In the base difference model, this parameter, when multiplied by gross plant additions, provides an estimate of the excess of tax deductions over book deductions attributable to base timing differences. Thus, as the value of this parameter is increased, holding all other parameters constant, the impact of normalizing base differences increases in all years. In the life difference model, capitalized expenses are subtracted from the book basis of plant additions to obtain the tax basis. Thus, an increase in the capitalized expenses percentage reduces the tax basis of plant additions. This, in turn, causes the impact of normalizing life differences to be inversely related to the value of the capitalized expense percentage parameter.

The capitalized items constituting the base timing differences include construction-related taxes, pensions, and interest expenses. It is hypothesized that capitalized expenses in year t are a constant percentage of gross plant additions in year t + 1. To estimate this parameter, the following relationship is assumed:

$$\frac{(C_t)}{(BB_{t+1})} = \frac{(C_t)}{(CWIP_t)} \times \frac{(CWIP_t)}{(BB_{t+1})}$$

where:
C_t = capitalized expenses, year t
$CWIP_t$ = average construction work in progress, year t
BB_t = gross plant additions, year t

The reason for estimating the relationship between the capitalized expenses and gross plant additions by this two-component method is because data are available on AFUDC interest expenses only since 1977.[106] Thus, to estimate the relationship by the single component method would provide only one observation—capitalized expenses in 1977 divided by gross plant additions in 1978. By using the two-component method, more information can be relied on so that greater confidence can be placed in the resulting percentages.

Capitalized expenses are hypothesized to be directly related to the average amount of construction work in progress (CWIP) in each year. This is a reasonable assumption since the major component of capitalized expenses is the interest component of AFUDC. For each of the years 1977 and 1978, AFUDC interest expenses constituted approximately 70 percent of the total estimated capitalized expenses for a sample of electric utilities.[107] Based on this sample, all capitalized expenses (AFUDC interest plus construction-related pensions and taxes) constituted about 6 percent of average electric utility CWIP in 1977 and 1978.

Capitalized expense data for natural gas pipelines were more difficult to obtain. The tax reconciliation statements were less detailed than those for electric utilities. Because of this, the aforementioned 70 percent AFUDC interest relationship for electric utilities was relied on to scale up the natural gas pipeline AFUDC interest expenses to an estimate of total capitalized expenses for pipelines. For the major Class A and B interstate pipelines, the resulting capitalized expense estimates averaged 10 percent of average CWIP for 1977 and 1978.

The disparity in the values of this percentage for electric utilities (6 percent) and gas pipelines (10 percent) is reconcilable.[108] In general, the relative size of new plant and the length of the construction period has caused electric utilities to rely more on long-term capital (equity as well as debt) in financing construction than have gas pipelines. Since equity capital costs are not deductible for tax purposes like interest expenses, the use of equity

[102] Omitted from the discussion of growth are the effects of such major projects as the Alaskan Natural Gas Transmission System (ANGTS). Section II. E. 2, *supra*, explains how normalization will lead to lower rates than flow-through for such "special projects."

[103] This range of inflation rates is consistent with projections in the aforementioned DOE, EW, and DRI studies.

[104] U.S. Department of Energy, Energy Information Administration, various years.

[105] U.S. Department of Energy, Energy Information Administration, various years.

[106] The Uniform Systems of Accounts were modified to require separate accounting for the interest component of AFUDC beginning in 1977. See FPC Order No. 561, Docket No. RM75–27, issued February 2, 1977.

[107] Statistics on the companies included in Moody's "24" electric utility composite sample were used to evaluate this relationship. *Moody's Public Utility Manual* (New York: Moody's Investors Service, Inc., 1979).

[108] The value for electric utilities was about 6 percent in each of years 1977 and 1978. For gas pipelines, however, it was about 7 percent for 1977 and 12 percent for 1978. This difference probably reflects the greater use of short-term debt by gas pipelines where the cost has fluctuated dramatically.

capital for construction financing by electric utilities would tend to cause the observed disparity in the percentages of capitalized expenses to CWIP. Another contributing factor may be the particular way in which AFUDC interest is computed when long-term capital is used to finance construction, since no distinction is made between low-cost embedded debt and high-cost marginal debt.

The estimated value of the ratio of average CWIP to gross plant additions for the following year is also significantly different between the two industries. For electric utilities, CWIP averaged about 1.9 times of gross plant additions for the five-year period 1974–78. The value for gas pipelines was a ratio of about 0.4.[109] The probable explanation for this disparity is in the average length of the construction periods between the two industries. Under steady growth conditions, the longer the average construction period, the greater will be the ratio of CWIP to gross plant additions.

Using the above-determined ratios in the hypothesized relationship, we have for gas pipelines,

(.10)(0.4)=.04, or 4 percent,

and for electric utilities,

(.06) (1.9)=.11 (rounded), or 11 percent.

Composite Straight-Line Book Life (N)
Gas—23 years.
Electric—31 years.

The book life parameter enters both models in complicated ways. In the base difference model, a higher value for this parameter raises the impact through the deferred tax debit effect [110] since it results in amortizing the deferred taxes arising in each year over longer periods. Concurrently, however, a higher book life lowers the impact through its effect on the amount of accumulated deferred taxes that are subtracted in each year from rate base. On net, the former effect is predominant, all other parameters held constant. Consideration of a cost of capital differential effect which works in a manner similar to the rate base deduction effect could reverse this result so that a higher book life, other parameters held constant, could lead to a reduction in the impact.

In the life difference model, increases in the book life, all other parameters held constant, tend to increase the impact because the effect of this factor is to increase the difference between the tax and book lives and, hence, the amount of the life timing differences. While the rate base deduction and cost of capital differential effects work in the opposite direction, their relative impact is generally not significant enough to offset the former effects.

This parameter is estimated as the average of beginning and end of year 1977 total depreciable (non-land) plant in each industry divided by total depreciation expense for that year. The statistics were obtained from the previously referenced DOE annual statistical reports for each industry.

	Depreciable plant ($M) (1)	Depreciation expense ($M) (2)	Average book life (yrs.) (1)÷(2)
Natural gas pipelines	25,701	1,137	22.60
Electric utilities	145,271	4,617	31.46

Composite Straight-Line Tax Life (M)
Gas—22 years.
Electric—28 years.

The tax life parameter affects only the life difference model. In that model, when all other parameters are held constant and the tax life remains less than the book life, an increase in the tax life reduces the impact of normalization for all years. This follows from the fact that as the difference between the tax and book lives becomes smaller, the size of the differences between the amount of depreciation recognized for taxes and the amount recognized for ratemaking (due to life differences) is reduced.

For the gas pipeline industry, this parameter is estimated as the Asset Guideline Period for Asset Guideline Class 49.24 (Gas utility trunk pipelines and related storage facilities) as reported in the *1979 U.S. Master Tax Guide.*[111]

The estimated value for the electric utility industry is the weighted average of the Asset Guideline Periods for the various types of assets making up the average of beginning and end of year total depreciable electric utility plant for 1977.

	Fraction of depreciable plant (1)	Guideline period (yrs.) (2)	Weighted life (yrs.) (1) x (2)
Production:			
Steam	.345	28	9.7
Nuclear	.080	20	1.6
Hydro	.028	50	1.4
Other	.024	40	.5
Transmission	.165	30	5.0
Distribution	.331	30	9.9
Other	.027	10	.3
			28.4

Capital Structure Parameters (d, p, and e)
Gas:
Debt ratio (d)—.45
Preferred ratio (p)—.05
Common Equity ratio (e)—.50
Electric:
Debt ratio (d)—.51
Preferred ratio (p)—.12
Common Equity ratio (e)—.37

These parameters are estimated as the average for the three-year period, 1976 to 1978, for all Class A&B electrics and for the major Class A&B pipelines as reported in the previously referenced DOE annual statistical reports for each industry.

Capital Costs (h, j, k)

	5 percent inflation	10 percent inflation
Gas:		
Debt cost (h)	7	12
Preferred cost (j)	7	12
Common equity cost (k)	12	17
Electric:		
Debt cost (h)	7	12
Preferred cost (j)	7	12
Common equity cost (k)	11	16

These capital costs, together with the capitalization ratios and tax rate, detemine the "pretax" overall rate of return (or cost of capital). The effect of this overall return value is unambiguous in both models since it is the basis of the reduction in return and tax allowances arising from the deduction of accumulated deferred taxes from rate base. Thus, an increase in the "pretax" overall rate of return resulting from changes in any of its components will decrease the impact of normalization applied to base and life differences in all years.

When consideration is given to the effects of a difference in the cost of capital under normalization and flow-through, the "pretax" return value determined with the above-hypothesized parameters is assumed to be the relevant return for normalization. The differential is then added to this normalization return to yield an estimate of the "pretax" return for flow-through. Of course, the effect of increasing the cost of capital differential is to reduce the impact of normalizing both base and life timing differences.

As the model is concerned with incremental investments, the relevant financial capital costs are the marginal costs expected to prevail, on average, over the forecast period. These costs

[109] These statistics, for both gas and electric, were based on industry-wide data. The greater availability of these data permitted the evaluation of these ratios over the longer time span than was possible for the ratio of capitalized expenses to construction work in progress. The ratios were reasonably stable over the period examined.

[110] See table 9, *supra.*

[111] Commerce Clearing House, Inc., 1979, p. 431–36.

should also be consistent with the assumptions on inflation used for the growth in new plant additions.[112] Thus, two sets of costs corresponding to expected average long-term inflation rates of 5 and 10 percent were developed.

The capital costs are derived from long-term real rates of return with adjustments for risk premiums and inflation. The long-term real returns are based on the most recent Ibbotson-Sinquefield study.[113] They determined nominal rates for common stocks and long-term corporate and government bonds for the period 1926 to 1978 as the geometric mean of the total rates of return for each year. These nominal rates were converted to real rates by adjusting for the actual inflation rate of 2.5 percent for the period 1926–78. The nominal and real rates are:

	In percent	
	Nominal rate	real rate[1]
Common Stocks	8.9	6.2
Long-Term Corporate Bonds	4.0	1.5
Long-Term Government Bonds	3.2	.7

[1] For example, 1.089 ÷ 1.025 = 1.062 or 6.2%. Schematically this may be represented as.

$$(1+r_n) = (1+r_r)(1=p)$$

or

$$r_r = \frac{(1 + r_n) - 1}{91 + p)}$$

where:

r_r = real rate of return
r_n = nominal rate of return
p = inflation rate

The average historical real rate of return on long-term corporate bonds is used as the long-term real cost of both debt and preferred stock [114] for both industries. The nominal rates are then calculated by adjusting the real rate (of 1.5 percent) for the range of expected long-term inflation rates (5–10 percent):

(1.015) × 1.05 = 1.066 or 6.6%
(1.015) × 1.10 = 1.116 or 11.6%

While the assumption that debt and preferred stock costs for the two industries are equal may be reasonable, a similar assumption for common equity costs would be less so. To recognize a difference in risk between the two industries, security "betas" are used as an approximate measure of relative risk. A Wells Fargo Bank study found average industry betas of 1.02 and .85 for natural gas pipelines and electric utilities, respectively.[115] These statistics indicate that natural gas pipelines are about equal in risk to the average of all common stocks while electric utilities are only 85 percent as risky as the average.

The Ibbotson-Sinquefield rate of return data, *supra*, show the risk premium for the average common stock over long-term government bonds to be 5.7 percent. Using the above-indicated betas, estimates of the common equity risk premiums for natural gas pipelines and electric utilities are 5.8 and 4.8 percent, respectively. (1.02 × 5.7 = 5.8 and .85 × 5.7 = 4.8). When the long-term government bond rate of 3.2 percent is added to each of these industry-specific risk premiums and the results are deflated for the long-term historical inflation rate of 2.5 percent, industry-specific long-term real rates of return on common equity are obtained. These rates can then be adjusted by using the postulated 5 and 10 percent inflation rates as used above for debt, to give nominal rates:

	Nominal rate		
	Real rate (percent)	5 percent inflation	10 percent inflation
Natural gas pipelines	6.3	11.8	16.9
Electric utilities	5.4	10.7	15.9

Recognizing the imprecision involved in any method of deriving marginal costs of capital, all capital costs were rounded to the nearest whole percentage point.

Tax Rate (y)

An income tax rate of 50 percent is assumed as a composite of 46 percent for Federal income taxes and 4 percent for both state and local taxes.

Base Year (1976) Total Required Revenues

Gas: $14,748 million
Electric: $50,553 million

This variable was used to provide perspective on the forecasted impacts of normalization. Total Class A & B electric utility and natural gas pipeline operating revenues for 1976 were used to approximate total required revenues.

3. Base and Life Difference Models Results

A summary of the impact analysis results for base and life timing differences, assuming no cost of capital differential between flow-through and normalization, is given in Table 11. The incremental dollar impacts of normalizing rather than flowing through new base and life timing differences arising in 1976 or later are given in the first 8 columns of this table in both current dollars and constant 1980 dollars.[116] The last 4 columns attempt to provide some perspective by relating the *incremental* dollar impacts to estimates of the *total* revenue requirements under flow-through.

As the projected impacts depend upon the nominal growth rates in a new plant additions for each industry and as there is a high degree of uncertainty as to this future growth, a range is used for each industry. The low and high nominal growth rates used are intended to encompass the range of reasonable estimates of average future growth in each industry. The range for the natural gas pipeline industry is 5 to 10 percent while that for the electric utility industry is 7 to 14 percent. The preceding section discusses the bases for these ranges.

The year 1976 is used as the base year from which impact projections are made. It was chosen to coincide with the first year under which companies were eligible to apply for and use normalization according the policy of FPC Order No. 530-B. The models are capable of yielding projections of impacts for as many years as desired, but the further into the future one goes, the less reliable the estimates become.

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[112] See discussion on Growth Rate in New Plant Additions, *supra*.

[113] Ibbotson, Roger G. and Rex A. Sinquefield, "Stocks, Bonds, Bills and Inflation: Updates, *Financial Analysts Journal* 35 (July-August 1979), p. 43.

[114] For the ten-year period, 1969 to 1978, the average yield differential between newly issued utility preferred stocks and utility bonds was .03 percent. See *Moody's Public Utility Manual* (New York: Moody's Investors Service, Inc., 1979), p. A3.

[115] Wells Fargo Bank, N.A., Institutional Counsel Service, *Security Market Plane*, November 1, 1978, p. 12.

[116] The conversion from current dollars to base 1980 dollars was made employing the hypothesized inflation rate for each case. For example, the 7 percent growth electric utility case impact (which incorporated a 5 percent inflation rate) were converted to constant 1980 dollars by inflating the pre-1980 impacts and deflating the post-1980 impacts by 5 percent per year.

Table 11

Summary of Base and Life Timing Difference Impacts Assuming Equal Capital Costs

Year	Normalized Required Revenues Minus Flow-Through Required Revenues — Current Dollars (Millions) — Natural Gas Pipelines — Low Growth Case (5%)	Natural Gas Pipelines — High Growth Case (10%)	Electric Utilities — Low Growth Case (7%)*	Electric Utilities — High Growth Case (14%)	Constant 1980 Dollars (Millions) — Natural Gas Pipelines — Low Growth Case (5%)	Natural Gas Pipelines — High Growth Case (10%)	Electric Utilities — Low Growth Case (7%)*	Electric Utilities — High Growth Case (14%)	Percent That Normalized Required Revenues Are Above (Below) Flow-Through Required Revenues — Natural Gas Pipelines — Low Growth Case (5%)	Natural Gas Pipelines — High Growth Case (10%)	Electric Utilities — Low Growth Case (7%)*	Electric Utilities — High Growth Case (14%)
BASE DIFFERENCE MODEL												
1976	$25.0	$26.2	$1495.	$1593.	$30.4	$38.4	$1817.	$2332.	0.17 %	0.18 %	2.96 %	3.15 %
1978	21.4	23.0	1408.	1610.	23.6	27.8	1552.	1949.	0.13	0.13	2.43	2.45
1980	17.7	19.6	1321.	1656.	17.7	19.6	1321.	1656.	0.10	0.09	1.99	1.94
1985	8.5	10.5	1109.	1955.	6.6	6.5	869.	1214.	0.04	0.03	1.19	1.19
1990	(1.0)	(0.1)	905.	2707.	(0.6)	(0.0)	555.	1043.	(0.00)	(0.00)	0.69	0.86
1995	(10.7)	(13.0)	710.	4333.	(5.1)	(3.1)	341.	1037.	(0.03)	(0.01)	0.39	0.71
2000	(19.5)	(28.5)	531.	7639.	(7.4)	(4.2)	200.	1135.	(0.04)	(0.02)	0.21	0.65
2005	(24.9)	(46.0)	372.	14183.	(7.4)	(4.2)	109.	1309.	(0.04)	(0.02)	0.10	0.63
LIFE DIFFERENCE MODEL												
1976	1.1	1.1	39.	39.	1.4	1.7	47.	57.	0.01	0.01	0.08	0.08
1978	3.3	3.3	117.	121.	3.6	4.0	129.	147.	0.02	0.02	0.20	0.19
1980	5.3	5.4	196.	211.	5.3	5.4	196.	211.	0.03	0.02	0.30	0.25
1985	9.6	10.1	397.	484.	7.5	6.3	311.	300.	0.04	0.03	0.43	0.29
1990	12.6	13.5	603.	874.	7.7	5.2	370.	337.	0.04	0.02	0.46	0.28
1995	14.0	15.0	817.	1491.	6.7	3.6	393.	357.	0.04	0.02	0.45	0.24
2000	(13.4)	(13.9)	1042.	2544.	(5.1)	(2.1)	392.	378.	(0.03)	(0.01)	0.41	0.22
2005	(17.2)	(22.4)	473.	3616.	(5.1)	(2.1)	139.	333.	(0.03)	(0.01)	0.13	0.16
COMBINED IMPACT												
1976	26.2	27.4	1534.	1632.	31.8	40.0	1865.	2390.	0.18	0.19	3.04	3.23
1978	24.7	26.3	1525.	1732.	27.2	31.8	1682.	2096.	0.15	0.15	2.64	2.64
1980	23.0	25.0	1518.	1867.	23.0	25.0	1518.	1867.	0.13	0.11	2.29	2.19
1985	18.1	20.6	1507.	2439.	14.1	12.8	1180.	1514.	0.14	0.06	1.62	1.48
1990	11.6	13.5	1508.	3582.	7.1	5.2	962.	1381.	0.04	0.02	1.16	1.13
1995	3.3	2.0	1528.	5824.	1.6	0.5	735.	1394.	0.01	0.01	0.84	0.96
2000	(33.0)	(42.5)	1573.	10184.	(12.4)	(6.3)	593.	1513.	(0.07)	(0.03)	0.61	0.87
2005	(42.1)	(68.4)	845.	17800.	(12.4)	(6.3)	249.	1642.	(0.07)	(0.03)	0.24	0.79

* See text for discussion of this case.

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As indicated above, the last four columns of Table 11 attempt to provide some perspective for evaluating the incremental impacts of the proposed rule by relating them to estimates of total required revenues under flow-through. The reasons for presenting the results in this manner are threefold. First, there is a general need for some basis upon which to evaluate the impacts. A $100 impact on a base revenue requirement of $1,000 is substantially greater than a $100 impact on a $100,000 base revenue requirement. Second, the percentages permit one to make the transition from changes in revenue requirements to changes in rates. This applies to rates on a per unit of output, per customer and per firm basis.[117] The third reason stems from the fact that FERC does not have jurisdiction over all rates in each industry. The models work at the industry level and estimate the impact of industry-wide normalization of base and life differences from 1976 forward.[118] To the extent that some State commissions do not choose to permit normalization for the specified base and life timing differences, the total dollar impact values estimated by the models overstate the actual impacts.

Total dollar impacts of FERC-only adoption of normalization can be estimated by multiplying the percentage of FERC-jurisdictional required revenues to industry-wide required revenues by the industry-wide impact figures. As an indication of FERC's jurisdiction, all Class A and B electric utilities' revenues from sales for resale averaged 9.8 percent of total revenues for the period 1973 to 1977.[119] For all Class A and B interstate natural gas pipelines, the comparable statistic is 80.5 percent. Table 12 is based on using these percentages to scale down the dollar impacts of Table 11 to provide estimates of the impacts on FERC-jurisdictional required revenues.

[117] Assuming a zero overall price elasticity so that outputs remains the same under both policies even though the prices are different, a one percent increase in required revenues means a one percent increase in per unit output prices. Assuming zero price elasticities across customer classes, a one percent increase in required revenues means a one percent increase in per customer rates. Finally, since the impacts are evaluated in terms of comparing the situation of all firms adopting normalization with that of all firms adopting flow-through, the percentage impacts can be applied to an individual firm's adopting normalization rather than flow-through.

[118] The terms "industry" and "industry-wide," as used in this study, refer to all Class A and B electric utilities or all Class A and B interstate natural gas pipelines.

[119] This should be qualified. If most CWIP is related to bulk power supply facilities, the wholesale-to-total revenue ratio may understate the actual jurisdictional impact.

The base year (1976) total required revenues under flow-through is estimated as total industry-wide operating revenues for 1976. These operating revenue data reflect varying levels of performance as well as varying degrees of normalization usage by individual companies. However, due to the small magnitude of the estimated impacts relative to total operating revenues, it is doubtful that the resulting percentage impact estimates are significantly affected by these defects.

Estimates of the future flow-through revenue requirements are forecasted by a simple extrapolation from the base year operating revenue data using the same growth rates as are used for new plant additions. If new plant additions grow at an annual rate of 10 percent, revenue requirements are also projected to grow at 10 percent. The assumption of a one-to-one relationships between these two growth rates is tenuous. The total revenue requirement growth will be affected by factors other than plant costs—most importantly, fuel price or gas cost increases. Historical data indicate that total operating revenues—the proxy used for total required revenues—grew at an average annual rate of 15.9 percent for electric utilities and 13.9 percent for natural gas pipelines over the last 10 years.[120] Growth in new plant additions in both industries over recent years has not been nearly as high. The assumption of identical growth rates, therefore, most likely biases the impact results upward.

The results presented in Table 11 indicate that, for those electric utilities that began normalizing both base and life differences in 1976, rates rose, on average, a maximum of about 3.2 percent above what they would have been had a flow-through policy been maintained. For natural gas pipelines, the comparable statistic is less than .2 percent. The table also shows that these projected total impacts diminish over time so that by 1990 the estimated maximum impacts are slightly more than 1.0 percent for electric utilities and less than .05 percent for natural gas pipelines. These empirical results are also presented graphically for a 40-year period in Charts 1 and 2. The graphs show more clearly the time pattern of the projected impacts.

By far, the largest impacts occur for electric utilities. The sum of the impacts of the base and life differences is in excess of one percent in both the low and high growth cases for the first 15 to 20 years. The most important factor contributing to these impacts is AFUDC interest expense.[121] Of particular significance are the trends depicted in Chart 2 for electric utilities where for both the low and high growth cases and for both base and life differences, normalized required revenues are projected to continually exceed flow-through required revenues. In contrast, Chart 1 (natural gas pipelines) shows that there is a point after which normalized required revenues are continually less than flow-through required revenues for both base and life differences and low and high growth rates.

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[120] These growth rates are based on a semi-log regression of total operating revenues against time for the period 1968 to 1977.

[121] In 1977 and 1978, AFUDC interest expense represented approximately 70 percent of the total construction-related base differences for electric utilities. This is based on an analysis of a sample of 24 Class A and B electric utilities. See Section III.A.2, *supra*.

Table 12

Summary of Base and Life Timing Difference Impacts Assuming Equal Capital Costs
FERC Jurisdictional Operations Only

Normalized Required Revenues Minus Flow-Through Required Revenues

Year	Current Dollars (millions)				Constant 1980 Dollars (millions)			
	Natural Gas Pipelines		Electric Utilities		Natural Gas Pipelines		Electric Utilities	
	Low Growth Case (5%)	High Growth Case (10%)	Low Growth Case (7%)	High Growth Case (14%)	Low Growth Case (5%)	High Growth Case (10%)	Low Growth Case (7%)	High Growth Case (14%)
				BASE DIFFERENCE MODEL				
1976	$ 20.2	$ 21.1	$146.6	$ 156.1	$ 24.5	$ 30.9	$178.1	$228.6
1978	17.2	18.5	138.0	157.9	19.0	22.4	152.2	191.0
1980	14.3	15.8	129.5	162.3	14.3	15.8	129.5	162.3
1985	6.8	8.4	108.7	191.6	5.3	5.2	85.2	119.0
1990	(0.8)	(0.1)	88.7	265.3	(0.5)	(0.0)	54.4	102.3
1995	(8.6)	(10.5)	69.7	424.6	(4.1)	(2.5)	33.5	101.7
2000	(15.7)	(23.0)	52.1	748.7	(5.9)	(3.4)	19.6	111.3
2005	(20.1)	(37.0)	36.5	1390.0	(5.9)	(3.4)	10.8	128.3
				LIFE DIFFERENCE MODEL				
1976	0.9	0.9	3.8	3.8	1.1	1.3	4.7	5.6
1978	2.6	2.7	11.5	11.9	2.9	3.2	12.7	14.4
1980	4.3	4.4	19.3	20.7	4.3	4.4	19.3	20.7
1985	7.7	8.1	38.9	47.4	6.1	5.0	30.5	29.5
1990	10.2	10.9	59.1	85.7	6.2	4.2	36.3	33.0
1995	11.2	12.1	80.1	146.2	5.4	2.9	38.5	35.0
2000	(10.8)	(11.2)	102.1	249.4	(4.1)	(1.7)	38.5	37.1
2005	(13.8)	(18.1)	46.4	354.4	(4.1)	(1.7)	13.7	32.7
				COMBINED IMPACT				
1976	21.1	22.0	150.4	160.0	25.6	32.2	182.8	234.2
1978	19.9	21.2	149.5	169.8	21.9	25.6	164.9	205.4
1980	18.5	20.2	148.8	183.0	18.5	20.2	148.8	183.0
1985	14.5	16.6	147.7	239.1	11.4	10.3	115.7	148.4
1990	9.4	10.8	147.8	351.0	5.7	4.2	90.8	135.3
1995	2.7	1.6	149.8	570.8	1.3	0.4	72.0	136.6
2000	(26.5)	(34.2)	154.2	998.1	(10.0)	(5.1)	58.1	148.4
2005	(33.9)	(55.1)	82.9	1744.4	(10.0)	(5.1)	24.5	161.0

Chart 1. Normalization Impact on Rates: Natural Gas Pipelines, 1976-2015

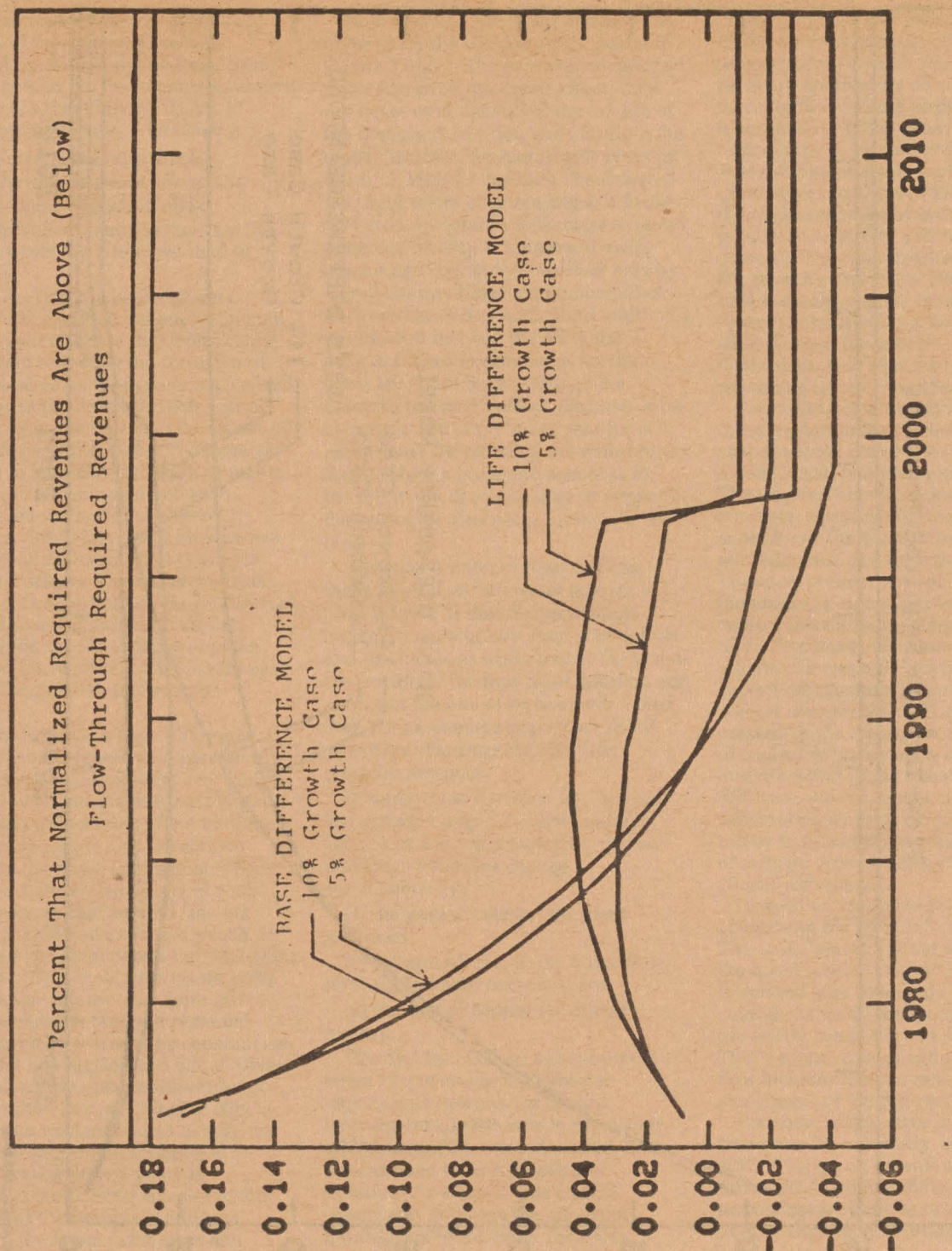
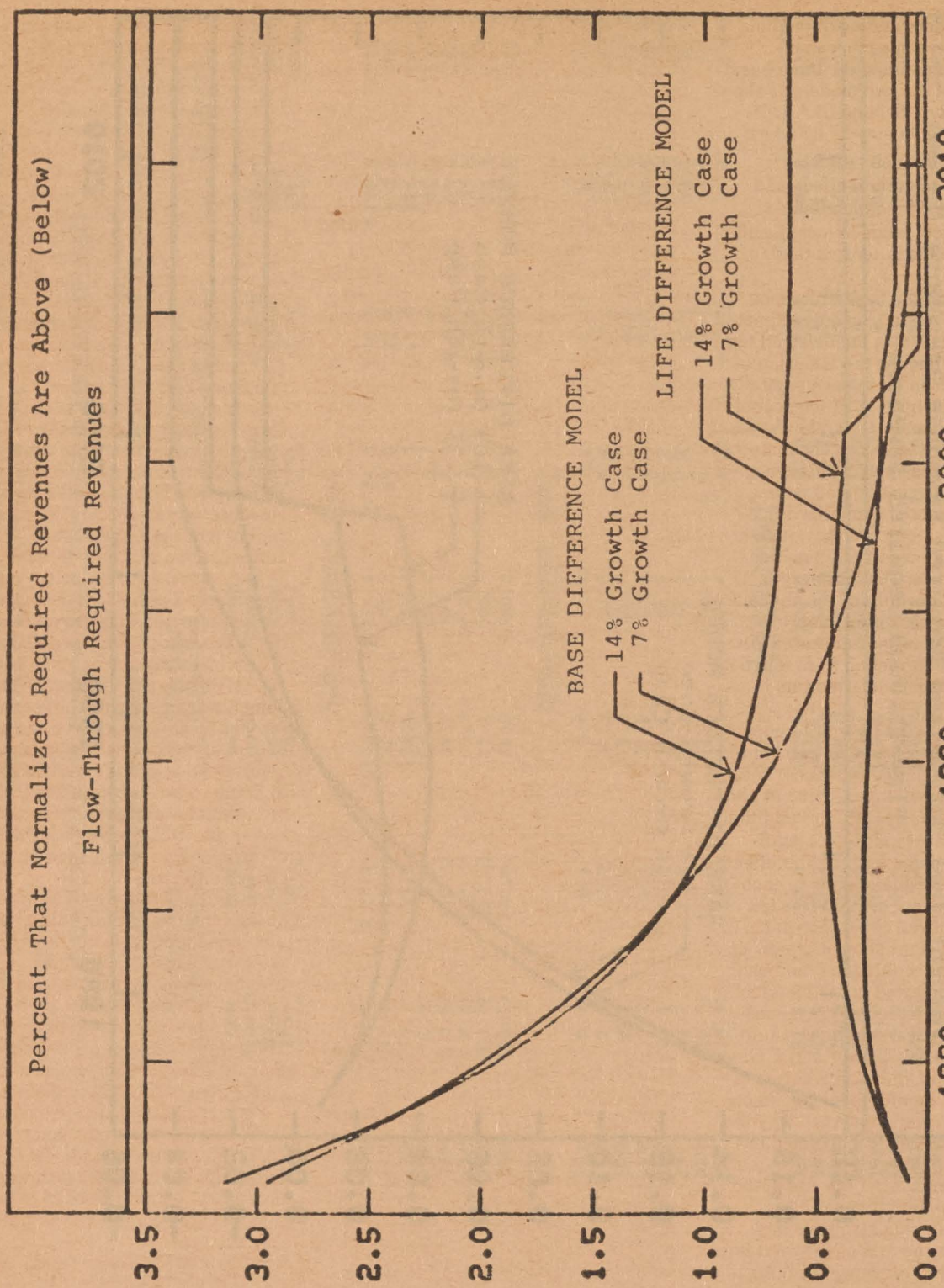


Chart 2. Normalization Impact on Rates: Electric Utilities, 1976-2015



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A better understanding of the time patterns of these impacts can be obtained by examining the three basic components of the two models as shown in Table 9, *supra*, Section III.A.1.[122] These components may be listed as:

(1) deferred tax debit effect,

(2) deferred tax credit effect, and

(3) rate base deduction effect.

The first effect tends to increase the impacts while the latter two tend to reduce it.

Consider first the base difference model. In this model, the only impact in the first year (1976) is the deferred tax debit effect reflecting the inclusion of deferred taxes on that year's capitalized expenses in the normalization cost of service. After the first year, however, all three effects are working. The impacts rise due to increasingly higher amounts of deferred taxes associated with growing amounts of capitalized expenses. Offsetting this, however, are the deferred tax credit and rate base deduction effects. The former reflects the amortized portions of the payback of deferred taxes permitted in earlier years, while the latter represents the effects of the subtraction from rate base of the accumulated deferred tax balances.

Now note that the base difference impacts are expressed as a percent of flow-through required revenues. Total required revenues are assumed to grow at the same rate as new plant additions. This growth rate is also the rate of growth in the deferred tax debit effect since the deferred tax debits in each year are a constant percent (the tax rate) of capitalized expenses which, in turn, are a constant percent of new plant additions. Thus if only the relationship between the deferred tax debit effect and flow-through required revenues were looked at, it would be constant—a horizontal line on Charts 1 and 2. Given this relationship, the incorporation of the two other, impact-reducing effects provides an explanation as to why the base difference impacts depicted in Charts 1 and 2 show a general downward trend. After the end of the book life of the first plant addition, however, the impact stabilizes and grows at the same rate as the total flow-through required revenues resulting in a constant percentage impact.

[122] The third and fourth components of the life difference model can be combined since they relate to the same phenomenon at different points in the service life of a plant. Also, for present purposes, the cost of capital is assumed equal for normalization and flow-through of the base and life timing differences so that the cost of capital differential effect component of each model is ignored.

Now examine the time pattern of the impacts for the life difference model in Charts 1 and 2. The payback of deferred taxes (deferred tax credit effect) does not begin until the end of the tax life of the first plant addition introduced in the model (22 years for gas and 28 years for electric). Prior to this time, the deferred tax debit effect is increasing at a faster rate than the total flow-through required revenues tending to create a growing percentage impact that is offset only by a growing rate based deduction effect. Between the end of each plant addition's tax life and its book life all of the deferred taxes accumulated for that plant are "paid back" through the deferred tax credit effect. Because of the shortness of this period (1 year for gas and 3 years for electric), the deferred tax credit effect is large and accounts for the relatively dramatic drop in impact at the end of the first plant addition's tax life.

The combination of these factors tends to produce the result (shown in Charts 1 and 2) that the percentage impact initially grows, then slowly falls, and finally drops beginning at the end of the tax life of the first plant addition and ending at the end of its book life. After that, the percentage impact levels off, growing at the same rate as total required revenues.

A comparison between the high and low growth cases for either model in Chart 1 or 2 is complicated by the fact that three variables change simultaneously:

(1) the growth rate in new plant additions

(2) the growth rate in the base (flow-through) required revenues, and

(3) the cost of capital (or rate of return).

The first two are, by assumption, set equal to one another. Of greater importance, however, is the link between the growth rate in new plant additions and the cost of capital. Both are assumed to be a function of inflation. As a result, one cannot reasonably evaluate the effects of holding two of the three variables constant and varying the third except within a small margin. (This variance would presumably reflect measurement error in the real components of the variables.)

Within this context, it should be noted that, with the exception of the low growth case for electric utilities, the result that normalization rates will or will not eventually fall below flow-through rates is unaffected by small changes in the input parameters.[123] In the low growth electric utility case, as presented in Table 11, normalization rates are continually above flow-through rates for the forecast period. Incorporated in this result is a "pretax" overall cost of capital of 13.39 percent.[124] A sensitivity analysis performed on this case, however, showed that increasing this estimated cost by less than 5 percent to a level of approximately 14.00 percent,[125] all other factors (including the growth rate in new plant additions) held constant, results in normalization rates eventually falling below flow-through rates for both base and life differences after about 30 years and remaining below from then on.

As explained in Section II. D, *supra*, there is good reason to believe that the cost of capital under flow-through is higher than it is under normalization. The empirical results addressed so far, however, assumed that the cost of capital was the same under normalization and flow-through. Tables 13 and 14 present data on the impacts of the proposed rule when this cost of capital assumption is dropped. For each of the four cases discussed above, the effects of a range of "pretax" cost of capital differentials (from 0 to 50 basis points) are presented. The reason for presenting the results for a range of cost of capital differentials is because quantification of the exact differential is difficult—what one wants is the differential attributable to normalizing rather than flowing through the effects of a single type of transaction, e.g., the "base" differences.

A word of caution is warranted concerning the "pretax" differentials. The term "pretax" is not used here in the usual sense. "Pretax" cost of capital is defined here to include both the capital costs and the income taxes on the equity component of those costs. The "pretax" cost of capital differential thus includes income taxes on the equity component of the differential.

For some perspective in evaluating these results, one study, completed in 1977,[126] found an overall cost of capital differential between flow-through and normalization utilities of 25 to 50 basis points. Three qualifications, however,

[123] That is, all parameters other than the growth rate in new plant additions for which high and low estimates are used to obtain the individual cases.

[124] The term "pretax" overall cost of capital, as used here, include income taxes as well as return on debt, preferred and common equity capital.

[125] For example, if the cost of equity capital in the low growth case were 12 percent rather than the hypothesized 11 percent, the "pretax" cost of capital would be 14.13 percent.

[126] Arthur Anderson and Co. (1977). See also Berndt, Chant and Watkins (1979) and Brigham and Pappas (1970).

should be made to this range. First, the range is based on observed differentials between companies with varying degrees of normalization and flow-through usage on a variety of different types of timing differences (including accelerated depreciation). A second point, related to the first, is that it is unclear that the cost of capital effects of normalizing each type of timing difference are additive. That is, if a utility is already normalizing accelerated depreciation timing differences, the cost of capital may not be significantly affected by normalizing additional timing differences. Finally, this 25 to 50 basis point differential is not a "pretax" cost of capital differential as defined above and used in the simulation studies for Tables 13 and 14 since it does not include income taxes. For comparison purposes, this 25 to 50 basis point differential should be viewed as corresponding to *about* a 50 to 90 basis point "pretax" differential.[127]

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[127] This "pretax" differential range is based on: (1) component capital cost differentials of 10 to 30 basis points for debt and preferred stock and 55 to 90 basis points for common equity; (2) capitalization ratios of 0.51, 0.12, and 0.37 for debt, preferred and common equity (see Section III.A.2, *supra*); and (3) a 50 percent income tax rate. The common equity cost differentials are derived from the 25 to 50 basis point overall cost of capital differential of Arthur Anderson and Company (1977) together with their estimated senior capital cost differential and assumed capital structure of 66 percent senior and 34 percent common equity capital.

Summary of Base and Life Timing Difference Impacts

With Cost of Capital Differences-- Natural Gas Pipelines

Percent That Normalized Required Revenues Are Above (Below) Flow-Through Required Revenues

YEAR	Low Growth Case (5%) "Pretax" Cost of Capital Differential (Basis Points)*						High Growth Case (10%) "Pretax" Cost of Capital Differential (Basis Points)*					
	0	10	20	30	40	50	0	10	20	30	40	50
						BASE DIFFERENCE MODEL						
1976	0.17 %	0.17 %	0.17 %	0.17 %	0.17 %	0.17 %	0.18 %	0.18 %	0.18 %	0.18 %	0.18 %	0.18 %
1978	0.13	0.12	0.12	0.11	0.10	0.09	0.13	0.12	0.11	0.11	0.10	0.09
1980	0.10	0.08	0.07	0.06	0.04	0.03	0.09	0.08	0.06	0.05	0.04	0.02
1985	0.04	0.01	(0.01)	(0.04)	(0.06)	(0.09)	0.03	0.01	(0.01)	(0.04)	(0.06)	(0.08)
1990	(0.00)	(0.03)	(0.07)	(0.10)	(0.13)	(0.16)	(0.00)	(0.03)	(0.05)	(0.08)	(0.10)	(0.13)
1995	(0.03)	(0.06)	(0.10)	(0.13)	(0.17)	(0.20)	(0.01)	(0.04)	(0.07)	(0.10)	(0.12)	(0.15)
2000	(0.04)	(0.08)	(0.11)	(0.15)	(0.18)	(0.22)	(0.02)	(0.05)	(0.07)	(0.10)	(0.13)	(0.16)
2005	(0.04)	(0.08)	(0.11)	(0.15)	(0.18)	(0.22)	(0.02)	(0.05)	(0.07)	(0.10)	(0.13)	(0.16)
						LIFE DIFFERENCE MODEL						
1976	0.01	0.00	(0.00)	(0.00)	(0.01)	(0.01)	0.01	0.00	(0.00)	(0.00)	(0.01)	(0.01)
1978	0.02	0.01	(0.00)	(0.01)	(0.02)	(0.04)	0.02	0.01	(0.00)	(0.01)	(0.02)	(0.03)
1980	0.03	0.01	(0.00)	(0.02)	(0.04)	(0.05)	0.03	0.01	(0.01)	(0.02)	(0.04)	(0.05)
1985	0.04	0.02	(0.01)	(0.04)	(0.07)	(0.09)	0.03	0.01	(0.02)	(0.04)	(0.06)	(0.09)
1990	0.04	0.01	(0.02)	(0.05)	(0.09)	(0.12)	0.02	(0.00)	(0.03)	(0.05)	(0.08)	(0.11)
1995	0.04	0.00	(0.03)	(0.07)	(0.10)	(0.14)	0.02	(0.01)	(0.04)	(0.06)	(0.09)	(0.12)
2000	(0.03)	(0.06)	(0.10)	(0.13)	(0.17)	(0.20)	(0.01)	(0.04)	(0.06)	(0.09)	(0.12)	(0.15)
2005	(0.03)	(0.06)	(0.10)	(0.13)	(0.17)	(0.20)	(0.01)	(0.04)	(0.06)	(0.09)	(0.12)	(0.15)
						COMBINED IMPACT						
1976	0.18	0.17	0.17	0.17	0.16	0.16	0.19	0.18	0.18	0.17	0.17	0.17
1978	0.15	0.13	0.11	0.10	0.08	0.06	0.15	0.13	0.11	0.09	0.07	0.06
1980	0.13	0.10	0.07	0.04	0.00	0.03	0.12	0.09	0.06	0.03	0.00	0.03
1985	0.08	0.03	(0.03)	(0.08)	(0.13)	(0.18)	0.06	0.01	(0.03)	(0.07)	(0.12)	(0.16)
1990	0.04	(0.02)	(0.09)	(0.15)	(0.22)	(0.28)	0.02	(0.03)	(0.08)	(0.13)	(0.18)	(0.23)
1995	0.01	(0.06)	(0.13)	(0.20)	(0.27)	(0.34)	0.00	(0.05)	(0.11)	(0.16)	(0.21)	(0.27)
2000	(0.07)	(0.14)	(0.21)	(0.28)	(0.35)	(0.42)	(0.03)	(0.08)	(0.14)	(0.19)	(0.25)	(0.30)
2005	(0.07)	(0.14)	(0.21)	(0.28)	(0.35)	(0.42)	(0.03)	(0.08)	(0.14)	(0.19)	(0.25)	(0.30)

* "Pretax" cost of capital is defined here to include both the capital costs and the taxes associated with the equity component of those costs. See Table 9 for mathematical definition.

Table 14

Summary of Base and Life Timing Difference Impacts
With Cost of Capital Differences--Electric Utilities

Percent That Normalized Required Revenues Are Above (Below) Flow-Through Required Revenues

YEAR	Low Growth Case (7%) "Pretax" Cost of Capital Differential (Basis Points)*						High Growth Case (14%) "Pretax" Cost of Capital Differential (Basis Points)*					
	0	10	20	30	40	50	0	10	20	30	40	50
BASE DIFFERENCE MODEL												
1976	2.96 %	2.96 %	2.96 %	2.96 %	2.96 %	2.96 %	3.15 %	3.15 %	3.15 %	3.15 %	3.15 %	3.15 %
1978	2.43	2.39	2.34	2.29	2.24	2.19	2.45	2.41	2.36	2.31	2.27	2.22
1980	1.99	1.91	1.82	1.73	1.65	1.56	1.94	1.86	1.78	1.70	1.62	1.54
1985	1.19	1.04	0.88	0.73	0.57	0.42	1.19	1.06	0.93	0.81	0.68	0.55
1990	0.69	0.50	0.31	0.11	(0.08)	(0.28)	0.86	0.71	0.56	0.41	0.27	0.12
1995	0.39	0.17	(0.04)	(0.26)	(0.47)	(0.69)	0.71	0.56	0.40	0.25	0.09	(0.06)
2000	0.21	(0.02)	(0.24)	(0.47)	(0.69)	(0.92)	0.65	0.49	0.34	0.18	0.02	(0.14)
2005	0.10**	(0.13)	(0.35)	(0.58)	(0.81)	(1.04)	0.63**	0.47**	0.31**	0.15**	(0.01)	(0.16)
LIFE DIFFERENCE MODEL												
1976	0.08	0.05	0.03	0.00	(0.02)	(0.05)	0.08	0.05	0.03	0.00	(0.02)	(0.05)
1978	0.20	0.13	0.07	(0.00)	(0.07)	(0.14)	0.19	0.12	0.06	(0.01)	(0.07)	(0.14)
1980	0.30	0.19	0.09	(0.01)	(0.12)	(0.22)	0.25	0.15	0.06	(0.03)	(0.12)	(0.22)
1985	0.43	0.26	0.10	(0.07)	(0.23)	(0.40)	0.29	0.16	0.03	(0.10)	(0.24)	(0.37)
1990	0.46	0.26	0.06	(0.14)	(0.33)	(0.53)	0.28	0.13	(0.02)	(0.17)	(0.32)	(0.47)
1995	0.45	0.23	0.01	(0.21)	(0.42)	(0.64)	0.24	0.09	(0.07)	(0.22)	(0.38)	(0.53)
2000	0.41	0.18	(0.05)	(0.27)	(0.50)	(0.72)	0.22	0.06	(0.10)	(0.26)	(0.41)	(0.57)
2005	0.13**	(0.10)	(0.33)	(0.55)	(0.78)	(1.01)	0.16**	0.00**	(0.16)	(0.31)	(0.47)	(0.63)
COMBINED IMPACT												
1976	3.04	3.01	2.99	2.96	2.94	2.91	3.23	3.20	3.18	3.15	3.13	3.10
1978	2.64	2.52	2.40	2.29	2.17	2.06	2.64	2.53	2.41	2.30	2.19	2.08
1980	2.29	2.10	1.91	1.72	1.53	1.34	2.19	2.01	1.84	1.67	1.50	1.32
1985	1.62	1.30	0.98	0.66	0.34	0.02	1.48	1.22	0.96	0.70	0.44	0.18
1990	1.16	0.76	0.37	(0.02)	(0.42)	(0.81)	1.13	0.84	0.54	0.24	(0.05)	(0.35)
1995	0.84	0.40	(0.03)	(0.46)	(0.89)	(1.33)	0.96	0.65	0.33	0.02	(0.29)	(0.60)
2000	0.61	0.16	(0.29)	(0.74)	(1.19)	(1.64)	0.87	0.55	0.24	(0.08)	(0.39)	(0.71)
2005	0.24**	(0.22)	(0.68)	(1.14)	(1.59)	(2.05)	0.79**	0.47**	0.15**	(0.16)	(0.48)	(0.79)

* "Pretax" cost of capital is defined here to include both the capital costs and the taxes associated with the equity components of those costs. See Table 9 for mathematical definition.

** Beyond 2005, normalized rates are projected to remain above flow-through rates for these cases.

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Of particular significance are the results in Table 14 relating to electric utilities. Assuming no cost of capital differential, Tables 11 and 12 and Chart 2 showed normalization rates continually above flow-through rates for electric utilities under both low and high growth conditions. In contrast, the results presented in Table 14 indicate that if the cost of capital differential is above some level (that varies in each case), normalization rates will eventually fall below flow-through rates and remain below from then on.

Finally, one of the most important conclusions of the empirical analyses is that they show that "continual tax deferrals" do not necessarily imply normalization rates continually above flow-through rates. In all four cases presented in Tables 11 and 12 and thus in the results shown in Tables 13 and 14 and for both base and life timing differences, accumulated deferred taxes are continually positive and growing throughout the forecast period. All four cases may this be considered situations of "continual tax deferrals." In contrast, however, only for the high and low growth cases for electric utilities where the cost of capital differential is assumed to be small or zero are normalization rates observed to be continually above flow-through rates.

4. *Plant Removal Costs.*

The timing difference related to plant removal costs is less amenable to modeling than the base and life timing differences. Any assumptions about future removal costs necessary to obtain meaningful results would be very spectulative.

The speculative nature of estimates of removal costs is particularly relevant to the electric utility industry. Among the most significant removal costs will be those incurred for nuclear plants. Yet estimates of these costs vary widely since the industry has had little experience with actual removal of nuclear generating plants. Also, the methods for decommissioning nuclear generating plants have widely varying estimates of costs. In a case currently before the Commission, estimates of decommissioning costs ranged from $5.4 million for moth-balling to $48.7 million for complete plant dismantling.[128] The method for decommissioning has not yet been selected by the Nuclear Regulatory Commission, and the actual costs will depend on the method selected.

For natural gas pipelines, removal costs will be especially important for offshore facilities. Over the last decade the natural gas pipeline industry has made a substantial investment of capital in the offshore area and these facilities have not reached the retirement stage. Thus, like nuclear generating plants, there has been little experience with the actual removal of offshore platforms and pipelines. Further, not only must a determination be made as to which facilities must be removed upon abandonment but also which methods and techniques should be used in their decommissioning. Adding to these difficulties are the inherent problems associated with forecasting future labor and materials price levels. The very speculative nature of estimating offshore pipeline removal costs is evident in a case currently before the Commission where estimates of removal costs ranged from $5.5 to $32.1 million.[129]

The problem of estimating removal costs for the Alaskan Natural Gas Transportation System is even more difficult and speculative as the cost of construction has not been determined at this time. Some perspective, however, can be obtained from the Trans-Alaska Pipeline System. The owners of that system anticpipate costs of over $1 billion to remove the pipeline and restore the adjacent lands to its original state.

Nevertheless, some understanding of how future removal costs will affect current rates should assist the Commission in its assessment of normalization and flow-through even though estimates of impacts on industry-wide rates are too speculative for quantification. Removal costs represent a Type II expense item—an expense that is recovered in rates *prior* to its availability as a tax deduction. It is a prepaid expense item rather than a deferred item, such as construction interest expense. The tax effects of the removal cost timing difference work in an opposite way from the tax effects of construction interest expense. With normalization of the tax effects of removal costs, customers realize the benefits from the tax deduction before the utility actually recognizes the tax deduction. Deferred tax credits are then accumulated (as accumulated defered debits) and added to rate base, giving the utility a return on the accumulated debits. Just as customers are compensated for their capital contributions through rate base deduction with normalization of Type I expenses so too is the utility compensated for its capital contribution by a rate base addition with normalization of Type II expenses.

B. Regulatory Commission Expenses

Another timing difference expense covered by the proposed rule is regulatory commission expense. Regulatory commission expenses are recognized for taxes in the year incurred. For ratemaking, however, they are generally amortized over periods ranging from 2 to 5 years for electric utilities. For natural gas pipelines, there is usually no amortization and therefore no timing difference.

The regulatory commission expenses as a percent of total operating revenues for the five-year period 1974 through 1978 were as follows:

	Class A and B natural gas pipelines	Class A and B electric utilities
1974	0.051	0.089
1975	.069	.104
1976	.057	.111
1977	.039	.108
1978	.039	.111
Average	.051%	.105%

To obtain some perspective on the impact of normalization applied to this expense item, consider the following. This is a Type I timing difference transaction. On a single transaction basis, the impacts (normalized required revenues minus flow-through required revenues) would follow a pattern similar to that of the construction-related base timing difference transactions except that the time period would be shorter (2 to 5 years) and a portion of the expense would be recognized in ratemaking during the year in which the expense is incurred. Assuming some growth in these expenses due, presumably, to inflation, projections of the impacts for a firm or industry would also follow a pattern similar to that of the base timing differences.

The comparison with base timing differences suggests that the largest impact is in the first year.[130] Suppose that a utility incurs $1 of regulatory

[128] *Connecticut Yankee Atomic Power Company*, Initial Decision, Docket No. ER78-360, issued January 23, 1980, p. 24.

[129] *Columbia Gulf Transmission Company*, Docket No. RP76-94, *et al.*; Initial Decision Determining Proper and Adequate Depreciation Rate—Including an Element Reflecting Negative Salvage—For Offshore Facilities, issued February 7, 1980.

[130] This is, in a sense, a "worst case" comparison since the primary basis for the amortization is to stabilize the fluctuations in regulatory commission expenses. For example, a three-year amortization period is based in large part on the expectation that, on average, a utility will seek a rate change or other action and incur significant regulatory commission expenses once every three years. Regulatory commission expenses will be high in one year and low in the following two years. On the other hand, the comparison with the base differences may be reasonable for the 1970's and the near-term future. Recent inflationary conditions have caused utilities to request more frequent rate increases. However, the frequency of filings should moderate over the long run.

commission expenses. A reasonable estimate of the average amortization period for electric utilities is two or three years. To obtain an estimate of the most likely maximum impact three years should be used. This means that $.33 will be recognized for ratemaking during the year incurred while $.66 will be deferred. The whole $1 will be recognized for taxes in year 1. Because of this difference, the utility will be allowed deferred taxes, under normalization, of about $.33 (or .5 x $.66) using a 50 percent tax rate. Further, because this additional revenue is taxable, another $.33 [131] must be allowed so that the original $.33 in deferred taxes is retained by the company. The sum ($.66) of the $.33 in deferred taxes plus the $.33 in additional taxes represents the incremental revenue requirements of a normalization policy over a flow-through policy for the first year. But this is less than total regulatory commission expenses incurred in that year. This means that whatever percentage regulatory commission expenses are of total operating revenues, the impact of normalization will be less. Thus, where regulatory commission expenses are only .1 percent of operating revenues, as for Class A and B electric utilities, the impact of normalization will be less. Thus, where regulatory commission expenses are only .1 percent of operating revenues, as for Class A and B electric utilities, the impact of normalization will be maximum increases in rates of less than .066 percent. And, unless regulatory commission expenses grow at a faster rate than operating revenues, this impact will diminish over time.[132]

IV. Summary of Conclusions

In determining whether normalization or flow-through is a preferable policy for the Commission to adopt, the staff analysis focused on the effects of each policy on utility rates, cash flow and rates of return. The study attempted to assess various consequences for *both* the utility and its ratepayers. Single transaction and multiple transaction cases were studied, so that distinctions between the policies could be observed (1) when transactions are viewed independently or (2) when transactions are viewed from the perspective of a utility that grows over time or continually engages in timing difference transactions. For explanatory purposes, the analysis focused on an expense item that is deducted for taxes in one time period but not recovered in rates until a later period. The analysis also discussed other expenses that, conversely, are recovered in rates in earlier periods than they are recognized for taxes, and revenue items that also create timing differences between tax and rate treatment. The conclusions are discussed in terms of the first type of expense even though they apply equally to other expense and revenue items that create timing differences.

The staff analysis draws generalized, analytic conclusions about normalization and flow-through as alternative ratemaking policies. In addition, the analysis quantifies the rate impacts on both the electric and natural gas pipeline industries when normalization rather than flow-through is used for specific items that have comparatively widespread and significant effects on rates for these industries. The analytical conclusions and the empirical impacts are summarized here.

A. Rate Impacts

The most obvious difference between the normalization and flow-through policies applied to single timing difference transactions is on the resulting rates charged customers. For those expenses that are recognized as tax deductions prior to their recognition (and recovery) in rates, normalization required revenues (and thus rates) are initially above flow-through required revenues. Later, however, this situation reverses and normalization rates fall below flow-through rates. AFUDC interest (used extensively in the study for illustrative purposes) is an example of such a timing difference transaction. The study shows, however, that for those expenses that are recognized (and recovered) in rates prior to their use as tax deductions (e.g., plant removal costs), rates under normalization are initially below and later above flow-through rates. In addition, there are certain types of revenue transactions that have comparable impacts on rates.

The staff analysis concludes that normalization produces rates that are more equitable to customers over time than flow-through. Under normalization, rates reflect ("match") the tax effects of transactions (tax reductions, or benefits, and tax additions) in the same periods that the transactions are themselves recognized in rates. Thus, for example, when ratepayers are charged for AFUDC interest expenses (over the service lives of plants) they are given the associated tax benefits. In contrast, flow-through gives the tax benefits of the AFUDC interest expenses to ratepayers during the construction period. In general, flow-through allocates the tax effects of timing difference transactions to customers in different periods than the transactions themselves are allocated.

While the primary rationale used to support flow-through is the "actual taxes paid" (in each period) doctrine, the staff study notes that this doctrine is inconsistent with the treatment accorded other costs. The "actual taxes paid" doctrine is not a particular application of some "actual costs incurred" principle since there are many costs that are included in rates on a prepaid or deferred basis. Again, AFUDC interest expense is a case in point since this cost is incurred by utilities during the construction period of new plants but is reflected in rates during the service lives of the plants. (The recognition of this expense on an "as incurred" basis for ratesetting would be tantamount to allowing construction work in progress (CWIP) in rate base.)

Flow-through has the effect of distorting regulatory pricing policies. For expenses incurred by a utility and recognized for taxes in one year but determined to be more appropriately allocated to rates charged in other years, a flow-through policy has the effect of reducing rates in the year in which the expense is incurred and does so by *more* than the tax benefits associated with that expense. Further, in the year(s) in which the expenses are recognized in rates, a flow-through policy raises rates by *more* than the amount of the expense recognition.

Normalization, on the other hand, effectively neutralizes the effects of contrary interperiod cost and revenue allocation regulations of the IRS on regulatory pricing policies. For an expense incurred in one year and determined to be more properly allocated to rates in other years, rates are unaffected during the year in which the expense is incurred and rise only by the amount of the allocated expense in the other years.

Under the Commission's normalization policy, the deferred taxes included in rates are treated as customer-contributed capital on which customers are given a "return" by way of lower rates than would otherwise be the case. This is accomplished by the Commission's policy of reducing rate base by the amount of accumulated deferred taxes. Further, as the staff study points out, this compensation to

[131] This is based on the use of the tax multiplier of 0.5/(1.–0.5) times the additional income of $.33 in deferred taxes.

[132] The base difference model was modified slightly to provide estimates of these impacts. The results for electric utilities using growth rates of both 5 and 10 percent (for inflation) were that normalization rates were higher than flow-through rates for 1976 and 1977, but were lower for all later years. The same results were obtained for gas pipelines using the same amortization period and growth rates.

ratepayers, at a rate equal to the utility's after-tax cost of capital, can be viewed as a tax-free "return" on the "loan" of deferred taxes since it is realized in the form of reduced rates rather than as taxable income.

The above conclusions are based on analyses of single timing difference transactions. In the multiple transaction case, the staff study examined the effects of various levels of growth for a utility. It was found that every timing difference reverses, but that the sum of the timing differences may cause a continual deferral of taxes so long as the recovery of the expense item itself is continually being deferred. It was further observed that the costs for which the utility's recovery are deferred are of a higher dollar value than the associated deferred taxes.

As a general matter, the overall impact on rates under flow-through and normalization depends largely on the type and level of growth that each utility experiences in the future. Apart from other considerations such as the difference in rates of return, low steady growth tends to produce normalization rates that fall below flow-through rates after a period of years. High steady growth can produce normalized rates that remain above flow-through rates; and fluctuating growth results in a mixture, over time, of normalization rates sometimes higher and sometimes lower than flow-through rates.

B. Cash Flow Impacts

The effects of normalization versus flow-through on utilities' cash flow are simpler and more straight-forward to analyze. Normalization tends to improve a utility's cash flow, as compared to flow-through, when the cash flow is most needed and to decrease it when the need is less. This is true for all types of timing differences. The interest expense timing difference is again a good example. When interest during construction funds are needed, deferred taxes under normalization provide utilities with additional internal capital. During the operating life of the plant, when the interest during construction costs are amortized in rates, but the utility has no current liability for them, normalization reduces internal cash flow.

The cash flow impacts of normalization can be easily estimated. One can measure the cash flow impact in any period as the product of the tax rate times the amount of the expenditure or the recovery of revenue. With a 50 percent tax rate, normalization provides additional cash in the amount of 50 percent of any incremental cash need arising from timing differences and reduces any incremental cash "excess" by 50 percent. Thus, the cash flow impacts of normalization are directly proportional to the incremental cash flow needs of the utility. In contrast, flow-through has no direct impact on cash flow.

C. Rate of Return Impacts and Cost of Capital Effects

The analysis concludes that, under normalization, deferred taxes—and growing accumulated deferred taxes—do not inure to utility stockholders. If the rate of return *allowed* for common equity is assumed to be the same under flow-through and normalization, the rate of return *earned* on common equity is found to be the same, all other things being equal. This is true because of the ratemaking treatment of deferred taxes. The subtraction from rate base of deferred taxes effectively treats the funds as ratepayer-contributed capital upon which the utility is not allowed to earn a return.

This is not to say that normalization and flow-through do not affect the cost of capital in different ways. Generally, the cost of capital to flow-through utilities tends to be higher than to normalized utilities, although the precise difference is not readily susceptible to quantification. The major reason for the cost of capital differential is that normalization stabilizes the cash flow of the utility in contrast to flow-through and thereby reduces the utility's risk associated with its ability to pay interest and equity returns. In addition, the deferred taxes under normalization provide a source of funds to the utility, thus lowering external capital requirements as compared to flow-through. To the extent that greater demands in the capital markets raise a utility's cost of capital, flow-through would cause a utility to have higher capital costs.

D. Other Considerations

There are several other analytical conclusions that emerge from the staff analysis. One concerns the method used for calculating the allowance for funds used during construction. The other concerns the impacts of normalization versus flow-through on special projects, such as the Alaskan Natural Gas Pipeline.

Regarding the method of calculating AFUDC, the staff analysis concludes that by calculating AFUDC using the gross-of-tax method, rates would be lower than if the net-of-tax method were used since the net-of-tax method produces no deferred taxes during construction that can be used to reduce rate base. With compounding of the AFUDC funds, the revenue differential between the two methods is reduced but not eliminated. Thus, some time value of the rate base deduction during construction is lost under the net-of-tax method.

For special projects that are formed to finance and operate a single project, rates under normalization will always be lower than under flow-through. Under flow-through, the tax benefits from construction period timing differences would not be passed on to customers since there would be no sales from the special project and therefore no rates through which customers could realize tax benefits. Normalization, however, would cause deferred tax debits to be accumulated during the construction period and used later to lower rates over the operating life of the special project.

E. Effects on Electric and Natural Gas Pipeline Rates

For selected timing differences, the staff analysis modeled the incremental effects on required revenues in each year in the future assuming that normalization rather than flow-through was used in the electric utility and natural gas pipeline industries. The models did not precisely quantify what effect on revenues would occur if only the *wholesale* rates of utilities reflected normalization. However, the staff analysis does infer the impact on wholesale revenues in the two industries from the proportion of total business subject to the Commission's jurisdiction.

Two specific types of timing differences were modeled. The first, base differences in depreciation, is caused by certain costs being spread over the life of the plant as part of depreciation for ratemaking, but being written off when incurred for tax purposes. Construction interest expense, used throughout the analytical discussion, is an example of a base timing difference. The second type of timing difference related to depreciation is the life difference that occurs when the tax life of an asset is different from its ratemaking (or book) life. The usual case is where the tax life of an asset is shorter than its ratemaking life.

One of the most significant findings in the empirical analyses is that normalized rates may fall below flow-through rates even though taxes are projected to be continually deferred. In all cases examined, and described below, accumulated deferred taxes are projected to grow continually. On the other hand, in many of the cases, normalized rates after some period of time fall below flow-through rates.

The estimated impacts are expressed in terms of current dollars and constant (1980) dollars and in terms of the percent that normalization revenues (and thus rates) are projected to be above or below flow-through revenues. A range of growth rates in new plant additions was selected because of the uncertainty of projecting future growth for these industries. As a simplifying assumption, the growth rates were assumed to be constant even though sporadic growth is more typical of industry performance.

For natural gas pipelines, the low growth case of 5 percent per year and the high growth case of 10 percent per year demonstrate that there is a point in time when normalized rates fall below flow-through rates and remain lower so long as the hypothesized conditions prevail. The percentage differences between the flow-through and normalized rates, however, are very small. Over the period examined, assuming the cost of capital is the same under both normalization and flow-through, normalized rates are, at most, about 0.2 percent higher than flow-through rates. At the other extreme, normalized rates may eventually become, at most, about 0.1 percent lower than flow-through rates.

The electric utility industry was hypothesized to grow at a low level of 7 percent annually and at a high level of 14 percent. In these two cases, again assuming no cost of capital difference between flow-through and normalization, normalized required revenues are projected to continually exceed flow-through required revenues. Again, however, the differences are reasonably small. Over the period studied, normalized rates ranged between 0.2 percent and 3.2 percent higher than flow-through rates.

When consideration is given to higher capital costs under flow-through as compared to normalization, some significant changes in the impacts occur. Most importantly, for reasonably small cost of capital differentials, normalization rates are projected to fall below flow-through rates in both low and high growth electric utility cases. With respect to natural gas pipelines, the effect of a cost of capital difference is to bring closer the time when normalization rates fall below flow-through rates.

In addition to the base and life difference models developed in the staff analysis, the impacts of normalizing regulatory commission expenses were also evaluated. Assuming regulatory commission expenses are 0.5 percent of operating revenues for pipelines and 0.1 percent of operating revenues for electric utilities, the impact of normalizing represents a maximum increase in rates of 0.04 percent for pipelines and 0.07 percent for utilities.

Finally, the staff analysis considered the impacts on rates of normalizing the tax effects of plant removal costs. No specific impacts were estimated because of the very speculative nature of removal costs at this time—particularly for nuclear power plants and offshore pipeline facilities which represent the most significant cases of removal costs. However, it was concluded that, unlike the other measured impacts, normalizing the tax effects of plant removal costs would tend to lower rates, at least initially below what they would be if the tax effects were flowed through.

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APPENDIX B

Table Showing State Commission Policy on Normalization

RATEMAKING TREATMENT BY STATE REGULATORY COMMISSIONS,* 1969 AND 1977

State	Accelerated depreciation		Guideline lives depreciation		Asset depreciation range		Investment tax credit		Accumulated deferrals deducted from rate base 2	
	1969	1977	1969	1977	1969 1	1977	1969	1977	1969	1977
Alabama	U	E	U	E		E	U	E	7	7
Alaska	N	N	U	F		F	N	N	Yes	Yes
Arizona	U	E	U	E		E	U	E	7	Yes
Arkansas	N	N	N	N		N	N	N	U	Yes
California	F	F 5	F	F		F	F	F 10	Yes	Yes
Colorado	F	E	F	E		E	N	N	Yes	Yes
Connecticut	F	F	F	F		F	F	F	7	Yes
Delaware	F	N	F	N		E	F	N	7	7
D C	F	N	F	N		N	E	N	Yes	Yes
Florida	N	N	U	N		N	U	N	No	Yes
Georgia	N	N	N	N		N	N	N	Yes	Yes
Hawaii	N	N	N	N		N	U	N	Yes	Yes
Idaho	E	U 6	F	U 6		U 6	N	U 6	No	Yes
Illinois	N	N	F	N		N	N	N	Yes	Yes
Indiana	N	N	9	N		F	N	N	Yes	No
Iowa	U	N	U	N		N	U	N	7	Yes
Kansas	N	N	U	7		U	N	N	No	No
Kentucky	N	N	7	N		U	N	N	Yes	Yes
Louisiana	N	N	N	N		N	N	N	Yes	Yes
Maine	F	F	9	F		N	F	N	Yes	Yes
Maryland	N	E	N	E		E	N	E	Yes	Yes
Massachusetts	N	N	U	N		N	N	N	No	Yes
Michigan	N	N	F	F		N	N	N	No	Yes
Minnesota	3	U	3	U		U	N	N	No	Yes
Mississippi	N	N	N	N		N	N	N	Yes	Yes
Missouri	F	N	F	7		N	F	N	No	Yes
Montana	E	E	U	E		E	N	7	No	No
Nebraska	N	7	N	7		7	N	N	No	Yes
Nevada	F	U	F	U		U	N	U	No	Yes
New Hampshire	F	E	F	E		N	E	E	Yes	Yes
New Jersey	F	N	U	F		N	E	N	Yes	Yes
New Mexico	U 4	N	N 4	7		7	E 4	7	Yes 11	Yes
New York	F	F	F	F		F	F	F	Yes	Yes
North Carolina	F	N	F	N		N	N	N	No	Yes
North Dakota	N	N	N	N		N	N	N	Yes	Yes
Ohio	F	N 8	F	E		E	F	N	No	Yes
Oklahoma	N	N	N	N		N	N	N	Yes	Yes
Oregon	F	E	F	E		N	F	E	No	Yes
Pennsylvania	F	N	F	N		N	N	N	Yes	Yes
Rhode Island	U	N	U	N		N	U	E	7	Yes
South Carolina	N	N	N	N		F	N	N	E	Yes
South Dakota	U	N	U	N		F	N	N	U	Yes
Tennessee	U	E	U	E		E	E	E	Yes	Yes
Texas	N	N	7	N		N	7	N	7	Yes
Utah	U	E	F	E		E	U	N	No	7
Vermont	F	E	F	E		E	F	E	7	Yes
Virginia	N	E	F	E		E	N	E	No	No
Washington	F	F	F	F		F	F	E	7	Yes
West Virginia	F	E	F	E		E	F	E	U	Yes
Wisconsin	F	N	F	N		N	F	N	7	Yes
Wyoming	N	N	N	N		N	N	N	Yes	Yes
TOTALS										
F - Flow through	19	5	22	8		8	12	3	Yes 22	44
N - Normalization	22	30	12	23		24	26	33	No 15	4
E - Either method	2	12	0	13		12	5	11	1	0
U - Undecided	7	3	12	3		5	7	2	3	0
O - Other or not reported	1	1	5	4		2	1	2	10	3

* Includes District of Columbia
Footnotes on next page

Source: Donald Kiefer, Accelerated Depreciation and the Investment Tax Credit in the Public Utility Industry: A Background Analysis, Occasional Paper No. 1, The National Regulatory Research Institute, The Ohio State University, April, 1979, Table 1, p. 44.

[1] Asset Depreciation Range did not exist in 1969

[2] States in which accumulated deferrals are included in the rate base but treated as cost free capital (i.e., no rate of return is allowed on the deferrals) are designated "Yes."

[3] Not used in regulated industry. State does not regulate electric or gas utilities.

[4] Flow through for telephone

[5] Four utilities normalize

[6] Commission requires consistent treatment of tax after election of method by each utility, based on latest Commission policy

[7] Not reported

[8] Some companies continue to flow through under orders issued prior to the Tax Reform Act of 1969

[9] Not used

[10] Four utilities use cost of service normalization

[11] No for telephone

SOURCES Federal Power Commission. Federal and State Commission Jurisdiction and Regulation of Electric, Gas, and Telephone Utilities. Washington, D.C., U.S. Govt. Print. Off., 1967. Pp. 38—39.

National Association of Regulatory Utility Commissioners. 1977 Annual Report on Utility and Carrier Regulation. Table 46. Pp. 516—519.

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Appendix C—Additional Examples of Timing Differences

Type I: Expenses that are recognized for tax filings in periods prior to when they are recognized in rates

Differences that result from expensing intangible drilling costs, delay rentals, geological and geophysical costs, and abandoned leases for tax purposes and capitalizing such costs for book purposes.

Differences that result from expensing hydrostatic testing costs for tax purposes and capitalizing such costs for book purposes.

Differences that result from expensing coal mining development costs for tax purposes and capitalizing such costs for book purposes.

Differences that result from expensing pre-operating expenses for tax purposes and deferring and amortizing such costs for book purposes.

Differences that result from expensing regulatory expenses for tax purposes and deferring and amortizing such costs for book purposes.

Differences that result from expensing storm damage costs for tax purposes but deferring and amortizing such costs for book purposes.

Differences that result from amortizing computer software costs for tax purposes over a shorter period than for tax purposes.

Type II: Expenses that are recognized for tax filings in periods later than when they are recognized in rates

Differences that result from nuclear fuel burn-up charges being greater during the burn cycle for book purposes than for tax purposes.

Differences that result from deferred compensation, profit-sharing, bonuses, vacation and severance pay being charged to expense for book purposes as accrued and expensed for tax return purposes when later paid.

Differences that result from pension costs being charged to expense for book purposes as accrued and expensed for tax return purposes when later contributed to pension fund.

Differences that result from expensing costs for repairs and maintenance for book purposes on an estimated basis and expensing such costs for tax purposes when later paid.

Differences that result from expensing inventory losses for book purposes on an estimated basis and expensing for tax return purposes when actual losses are later determined.

Type III: Revenues that are recognized for tax filings in periods prior to when they are recognized in rates

Differences that result from amounts collected subject to refund being included in revenues for tax purposes but deferred in the accounts for book purposes.

Differences that result from gains on reacquired debt being included in taxable income but deferred and amortized for book purposes.

Differences that result from transportation revenues being included in taxable income and such revenues being deferred for book purposes.

Differences that result from revenues being included in income for tax purposes and credited to exploration funds for book purposes.

Differences that result from gains on sales of property leased back being included in taxable income and deferred and amortized for book purposes.

Type IV: Revenues that are recognized for tax filings in periods later than when they are recognized in rates

Differences that result from revenues on long-term contracts being reported for book purposes on percentage-of-completion basis and reported in tax returns on a completed-contract basis.

Differences that result from installment sales being recorded for book purposes on date of sale and reported in tax returns when later collected.

[FR Doc. 80-10088 Filed 4-2-80; 8:45 am]
BILLING CODE 6450-01-M

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18 CFR Part 282

Final Phase II Regulations Extending Incremental Pricing Program to All Industrial Users of Natural Gas; Natural Gas Policy Act of 1978; Informal Conference

[Docket No. RM80-10]

March 28, 1980.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of Informal Conference.

SUMMARY: On March 20, 1980, the Federal Energy Regulatory Commission (Commission) instructed Commission Staff to develop final Phase II regulations extending the incremental pricing program to all industrial users of natural gas except those specifically exempted by the Natural Gas Policy Act of 1978 (NGPA). One feature of the Commission instructions would give states the discretion to limit the impact of Phase II on individual users in order to ease any serious transitional burden. The regulations, if adopted, would provide that, if, during its first year, Phase II would result in a surcharge of more than 75 cents per thousand cubic feet to any industrial user, a state may allocate that portion of the surcharge exceeding 75 cents to other incrementally priced gas users within the state.

Notice is hereby given that an informal conference with representatives of interested State Commissions will be held for the purpose of receiving comments on this aspect of the draft Phase II regulations. The conference will be held on April 15, 1980, beginning at 9:30 a.m., in Hearing Room A at the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426

The conference will be transcribed and made a part of the record in this docket. The public is invited to observe the proceedings.

DATE: April 15, 1980, at 9:30 a.m.

ADDRESS: Federal Energy Regulatory Commission, Hearing Room A, 825 North Capitol Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Blaine Yamagata, Office of Commissioner Hall, 825 North Capitol Street, N.E., Washington, D.C. 20426 (202) 357-8377

Lois D. Cashell,

Acting Secretary.

[FR Doc. 80-10087 Filed 4-2-80; 8:45 am]
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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 175

[CGD 80-021A]

Equipment Requirements for Boat Operators; Acceptance of Hand Red Flares as Visual Distress Signals

AGENCY: Coast Guard, DOT.

ACTION: Proposed rules.

SUMMARY: These regulations propose a revision to the Coast Guard requirements for boat operators to carry visual distress signals. The proposed revision would add Coast Guard approved hand red flares to the list of devices that are acceptable for use on recreational boats. This proposal should be considered in conjunction with an associated proposal (CGD 80-021) to change the approval specification requirements for hand red flare distress

signals which appears elsewhere in this issue of the **Federal Register.**

DATES: Comments must be received on or before April 18, 1980.

ADDRESSES: 1. Comments should be mailed to Commandant (G–CMC/TP24) CGD 80–021A), U.S. Coast Guard, Washington, D.C. 20593. Between the hours of 7:00 a.m. and 5:00 p.m., Monday through Thursday, comments may be delivered to, and are available for inspection and copying at the Marine Safety Council (G–CMC/TP24), Room 2418, Department of Transportation, Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C. 20593.

2. Copies of the National Bureau of Standards Report FR 3950 are available from Commandant, U.S. Coast Guard (G–MMT–3/12), Washington, D.C. 20593.

FOR FURTHER INFORMATION CONTACT: LCDR Harry Schmecht, Office of Boating Safety (G–BLC–3/42), Department of Transportation, U.S. Coast Guard Headquarters, Washington, D.C. 20593, (202) 426–4176.

SUPPLEMENTARY INFORMATION: The public is invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their name and address, identify this notice (CGD 80–021A) and the specific section of the proposal to which the comment applies, and give the reasons for the comment. Persons desiring acknowledgement that their comment has been received should enclose a stamped self-addressed postcard or envelope. The proposal may be changed in view of the comments received. All comments received will be considered before final action is taken on this proposal. Copies of all written comments received will be available for examination by interested persons at the Marine Safety Council address noted above. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

This rule has been reviewed and determined to be non-significant under the Department of Transportation's Regulatory Policies and Procedures published on February 26, 1979 (44 FR 11034). A draft evaluation has been included in the public docket for this rulemaking, and may be obtained from the Marine Safety Council (G–CMC/24) at the address listed in the ADDRESSES section. A summary of this draft evaluation may be found in the related document (CGD 80–021) that appears elsewhere in this issue of the **Federal Register.**

Drafting Information

The principle persons involved in drafting these regulations are: JTJG John Coleman, Office of Boating Safety, and Mr. Coleman Sachs, Office of the Chief Counsel.

Background

On December 17, 1979 the Coast Guard published regulations that require carriage of Coast Guard approved visual distress signals on boats (CGD 76–183, 44 FR 73021). The regulations apply to boats used on the high seas and on coastal waters (territorial seas, the Great Lakes, and bays and sounds that empty into these waters). To give boat operators flexibility and discretion in selecting visual distress signals to satisfy their needs and personal preferences, the regulations provide a list of acceptable devices. When the regulations were published in proposed form, the list included red hand flares. In the final rule, these devices were omitted from the list.

Hand red flares were not on the list of acceptable devices due to objections that were raised over the validity of one of the tests that were proposed in the approval specifications for these flares. The test was intended to determine the potential of a fire being started on a boat by the hot slag that is expelled by burning flares. In the proposed test, newspapers were used as a surface over which the flares were burned. If the newspaper caught fire, or if the slag scorched more than half the paper, the flare failed the test. It was generally felt that the test was invalid, as newspaper does not realistically simulate any particular material or hazardous condition that exists on a recreational boat.

With the cooperation of the National Bureau of Standards, the Coast Guard has devised a new test to determine the fire causing potential of the hot slag produced by burning flares. This test requires the flares to be burned over heptane rather than newspaper. Heptane is a component of gasoline and is commonly used as a standard test fuel to represent gasoline.

The Coast Guard feels that the test will provide a more realistic measure of the hazards that exist on gasoline powered boats. It is proposing the addition of the heptane test to the approval specifications for hand red flares, as found in a related notice (CGD 80–021) published elsewhere in this issue of the **Federal Register.**

It was noted in the final rule requiring the carriage of distress signals on boats that if a satisfactory fire ignition test could be devised as part of the approval specification for hand red flares, then these devices could be added to the list of those accepted for use on boats. As the Coast Guard feels that the proposed heptane test will be suitable, it is also proposing at this time that the hand red flare be added to the list of accepted devices.

The Coast Guard is proposing that this amendment become effective on January 1, 1981. This is the effective date for the regulations covering all the visual distress signals presently listed in 33 CFR Part 175. If the proposed effective date cannot be met, some boaters who would prefer to use hand red flares may have to purchase other visual distress signals to satisfy the carriage requirement for these devices until hand red flares may be added to the list.

In order to provide manufacturers with sufficient time to produce and distribute hand red flares capable of passing the heptane test, the Coast Guard would like the regulation adding this test to the approval specifications to go into effect at least 90 days before hand red flares are authorized for carriage on boats.

Assuming the regulation adding the heptane test goes into effect on October 1, 1980, hand red flares manufactured after that date will be acceptable for use on boats. Purchasers will be able to determine which flares may be used by referring to the date of manufacture that must be marked on each device.

In consideration of the foregoing, the Coast Guard proposes to amend Title 33 of the Code of Federal Regulations as set forth below.

1. By revising the Table 175.130 to read as follows:

Table 175.130

Number marked on device:	Device description	Accepted for use	Number required to be carried
160.021	Hand red flare distress signals	Day and night[1]	3
160.022	Floating orange smoke distress signals	Day only	3
160.024	Pistol-projected parachute red flare distress signals.	Day and night[2]	3
160.036	Hand-held rocket-propelled parachute red flare distress signals.	Day and night	3
160.037	Hand-held orange smoke distress signals	Day only	3
160.057	Floating orange smoke distress signals	Day only	3

Table 175.130—Continued

	Device description	Accepted for use	Number required to be carried
160.066	Distress signal for boats, red aerial pyrotechnic flare.	Day and night[3]	3
160.072	Distress signal for boats, orange flag	Day only	1
161.013	Electric distress light for boats	Night only	1

[1] These signals must have a date of manufacture of ( ) or later to be acceptable.
[2] The signals require use in combination with a suitable launching device approved under 46 CFR 160.028.
[3] These devices may be either self-contained or pistol launched, and either meteor or parachute assisted type. Some of these signals may require use in combination with a suitable launching device approved under 46 CFR 160.026.

(46 U.S.C. 1454, 49 CFR 1.46(n)(1))

Dated: March 25, 1980.

B. E. Thompson,

Rear Admiral, U.S. Coast Guard, Chief, Office of Boating Safety.

[FR Doc. 80-10152 Filed 4-2-80; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 325

Processing of Department of the Army Permits; Procedures for the Protection of Cultural Resources

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Proposed counterpart regulations.

SUMMARY: These proposed regulations would establish the procedures to be followed by the U.S. Army Corps of Engineers in its regulatory program in order to comply with the National Historic Preservation Act, implementing regulations, and Executive Orders for the protection of historic and cultural properties. These regulations have been jointly drafted with the Advisory Council on Historic Preservation as counterpart regulations pursuant to 36 CFR 800.11. The Corps of Engineers is now following the prodedures set forth in these regulations on an iterim basis.

DATE: Comments must be received on or before June 6, 1980.

ADDRESS: Comments should be addressed to HQDA (DAEN-CWO-N), Washington, DC 20314.

FOR FURTHER INFORMATION CONTACT: Bernie Goode, Corps of Engineers, address as above, (202) 272-0199 or Peter Smith or Al Clark, Advisory Council on Historic Preservation, 1522 K Street, NW., Washington, DC. 20005, (202) 254-3886.

SUPPLEMENTARY INFORMATION: On 30 January 1979, the Advisory Council on Historic Preservation published final amendments to its regulations (36 CFR Part 800) implementing Section 106 of the National Historic Preservation Act, as amended (16 U.S.C. 470 f), and two Presidential Directives. The purpose of Section 106 is to protect properties included in or eligible for inclusion in the National Register of Historic Places through review and comments by the Advisory Council on Federal undertakings, including licensing activities, that affect such properties. The President, in his Memorandum on Environmental Quality and Water Resource Management dated 12 July 1978, directed the Advisory Council to promulgate regulations for implementing the National Historic Perservation Act. He further directed Federal agencies with consultative responsibilities under the Act to publish separate procedures for implementing the Advisory Council's regulations. Section 800.11 of the Advisory Council regulations provides that certain responsibilities of individual Federal agencies may be met by counterpart regulations jointly drafted by that agency and the Executive Director of the Advisory Council and approved by the Chairman of the Advisory Council. The regulations being proposed today are to fulfill the responsibilities of the U.S. Army Corps of Engineers as stated above for its regulatory programs. Cultural resource policies and procedures for non-regulatory programs of the Corps of Engineers are prescribed in 33 CFR Part 305. We propose to append these counterpart regulations to 33 CFR part 325, Processing of Department of the Army Permits. We welcome public comment on these proposed regulations. Accordingly, it is proposed to amend 33 CFR Part 325 by adding a new Appendix C to read as set forth below.

Note.—The Department of the Army has determined that the proposed regulations are not significant within the meaning of Executive Order 12044, and consequently do not require a regulatory analysis.

(16 U.S.C. 470)

Dated: March 26, 1980.

Hugh G. Robinson,

Brigadier General, USA, Deputy Director of Civil Works.

It is proposed to amend 33 CFR Part 325 by adding a new Appendix C to read as follows:

PART 325—PROCESSING OF DEPARTMENT OF THE ARMY PERMITS

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Appendix C—Procedures for the Protection of Cultural Resources

1. *General.* This appendix establishes the procedures that will be followed in complying with the National Historic Preservation Act, implementing regulations, and Executive Orders which pertain to scientific, historic, architectural, and archeological resurces that may be affected by work or structures authorized by Department of the Army permits. These procedures apply only to those properties listed in or eligible for listing in the national Register of Historic Places (National Register) which would be affected by the permitted activity. The term "National Register properties" as used in this appendix shall mean those properties which are either listed in the National Register or have been determined to be eligible for listing pursuant to 36 CFR Part 63. The "permit area" is defined in paragraph 2 below and is the geographical limit of the District Engineer's responsibility to *investigate* properties which *may be* eligible for listing in the National Register. National Register properties that may be affected by the proposed work or structures, even though located outside of the permit area, are subject to consideration under the applicable laws and regulations including the procedures outlined in paragraphs 8 through 10 below. Nothing in this appendix is intended to relieve another Federal agency of its resposibilities to comply with applicable laws and regulations related to cultural resources.

2. *Permit area.* a. The term "permit area" as used in this appendix means those areas comprising the waters of the United States that will be physically affected by the proposed work or structures and uplands directly affected as a result of authorizing the work or structures. The following three tests must all be satisfied for an activity undertaken outside the waters of the United States to be included within the permit area:

(1) Such activity would not occur but for the authorization of the work or

structures within the waters of the United States;

(2) Such activity must be integrally related to the work or structures to be authorized within waters of the United States. Or, conversely, the work or structures to be authorized must be essential to the completeness of the overall project or program; and

(3) Such activity must be directly associated (first order impact) with the work or structures to be authorized.

b. For example, consider an application for a permit to construct a pier and dredge an access channel so that an industry may be established and operated on an upland area.

(1) Assume that the industry requires the access channel and the pier and that without such channel and pier the project would not be feasible. Clearly then, the industrial site, even though upland, would be within the permit area. It would not be established "but for" the access channel and pier; it also is integrally related to the work and structure to be authorized; and finally it is directly associated with the work and structure to be authorized. Similarly, all three tests are satisfied for the dredged material disposal site and it too is in the permit area even if located on uplands.

(2) Consider further that the industry, if established, would require the extension of water and sewer lines to service the industrial site. Assume that the extension would not involve the waters of the United States. The extensions would not be within the permit area because they would not be directly associated with the work or structure to be authorized.

(3) Now consider that the industry, if established, would require increased housing for its employees, but that a private developer would develop the housing. Again, even if the housing would not be developed but for the authorized work and structure, the housing would not be within the permit area because it would not be directly associated with an integrally related to the work or structure to be authorized.

c. Consider a different example. This time an industry will be established that requires no access to the navigable waters for its operation. The plans for the facility, however, call for a recreational pier with an access channel. The pier and channel will be used for the company-owned yacht and employee recreation. In the example, the industrial site is not included within the permit area. Only areas of dredging, dredged material disposal, and pier construction would be within the permit area.

3. *Affected area.* The term "affected area" as used in this appendix is that geographical area within which direct and indirect effects of the proposed work and/or structures, if permitted, could reasonably be expected to occur. This is the area of potential environmental impact and, in most cases, will exceed the limits of the permit area.

4. *Initial review and public notice.*

a. Except as indicated in b. below, the District Engineer, upon receipt of an application, will consult the published listings of the National Register to determine if any National Register properties exist within the affected area. If he determines that such properties exist within the affected area, he will identify the National Register property for inclusion in the public notice.

b. In certain specific instances, the nature, scope and magnitude of the work and/or structures to be permitted may be such that the effort to identify historic and cultural resources is not warranted. Three such situations are:

(1) Areas that have been extensively modified by previous work. In those areas previously impacted and when the proposed work is within the scope of work which has been done before, potentially eligible National Register properties that may have at one time existed within the permit area have been lost.

(2) Areas which have been created in modern times. Some recently created areas, such as dredged material disposal islands, have had no human habitation. In such cases, there is no potential for the permit area to contain potentially eligible National Register properties.

(3) Certain types of work or structures that are of such limited nature and scope that there is little likelihood of impinging upon an eligible or listed National Register property if such properties were to be present within the affected area.

Where the District Engineer determines as the result of this initial review that little likelihood exists for the proposed work to impinge upon a National Register or eligible property, no further steps need to be taken under 36 CFR Part 800. A statement concerning this determination, along with an explanation of the determination, will be included in the public notice.

c. A statement concerning the District Engineer's current knowledge of the presence or absence of National Register or eligible properties and, if present, a preliminary statement on the effects of the proposed work on those properties will be included in the public notice. The description of the proposed work and its purpose, included in the public notice pursuant to § 325.3, should be in sufficient detail to enable interested parties to identify the permit area and possible effects of the proposed activity. A copy of every public notice will be sent to the U.S. Department of the Interior, Heritage Conservation and Recreation Service (HCRS), and to the State Historic Preservation Officer (SHPO). If the District Engineer is aware of or is informed of a National Register property within the affected area, he will commence with the effect determination in accordance with paragraph 8 below.

5. *Notifications.* The District Engineer, when properly notified of the existence of a potentially eligible property shall examine the evidence presented. Proper notification must set forth specific reasons for the need to further investigate the permit area. Proper notification may consist of:

a. Specific information concerning properties which may be eligible for inclusion in the National Register and which are known to exist in the vicinity of the permit area; and

b. Specific information concerning known sensitive areas which are likely to yield resources eligible for inclusion in the National Register, particularly where such sensitive area determinations are based upon data collected from other, similar areas within the general vicinity. Comments of a general nature will not be considered proper notification nor will requests for investigations outside the permit area. Where the scope and type of work proposed by the applicant or the evidence presented leads the District Engineer to conclude that the chance of disturbance to any such resources is too remote to justify further investigation, he shall so advise the reporting party and the SHPO. If the SHPO does not agree with the conclusions of the District Engineer, the District Engineer may refer the issue to the Chief of Engineers (ATTN: DAEN–CWO–N) who, in consultation with the Advisory Council on Historic Preservation (ACHP), will decide on the need for further investigation. If the SHPO does not dispute the conclusions of the District Engineer within 20 days of being notified or if contrary guidance is not provided by DAEN–CWO–N, the District Engineer may proceed to conclude his action on the permit application.

6. *Investigations.* If the evidence indicates that further examination of the permit area is justified, the District Engineer will conduct or cause to be conducted an investigation to identify resources that may be eligible for inclusion in the National Register. As determined by the District Engineer, investigations may consist of further

consultations with the SHPO and the State Archeologist; consultations with local historical and archeological societies, university archeologists, and others with knowledge and expertise in the identification of historical, archeological, cultural and scientific resources; field examinations of the permit area by qualified personnel; and archeological testing. In appropriate cases as determined by the District Engineer, the applicant may be required, in accordance with § 325.1(e), to investigate the permit area for the presence of historical, cultural, archeological and scientific resources that may be eligible for listing in the National Register.

The Corps of Engineers' investigative responsibilities extend only to the identification of resources within the permit area. In the case where properties that may be eligible for listing in the National Register are suspected to exist in the vicinity of the permit area, the Corps' identification responsibility is only to determine whether the resource is present within the permit area. The Corps is not responsible for locating a potentially eligible property outside of the permit area.

7. *Eligibility determinations.* If the investigation confirms the presence of cultural resources within the permit area that, in the opinion of the SHPO or the District Engineer, appear to meet the criteria for inclusion in the National Register, the District Engineer will request a determination of eligibility from the Keeper of the National Register in accordance with 36 CFR 63.2 and 63.3 and notify the applicant of the further delays that will occur. If the Keeper of the National Register determines that the resources are not eligible for listing in the National Register or fails to respond within 45 days of receipt of the request, the District Engineer may proceed to conclude his action on the permit application.

8. *Effect determinations.* For all National Register properties within the affected area, the District Engineer, in consultation with the SHPO, will determine the effect of the work on those properties in accordance with 36 CFR 800.3.

If the SHPO concurs with or fails to comment within 30 calendar days on a no effect determination, the District Engineer may proceed to conclude his action on the permit application. If the SHPO disagrees with a no effect determination, the ACHP will be asked to decide if there will be an effect or not.

If an effect on a National Register property is determined, the District Engineer, in consultation with the SHPO, will then decide, in accordance with 36 CFR 800.3(b), whether or not the effect would be adverse. If a no adverse effect determination is made by the District Engineer in consultation with the SHPO, and the ACHP concurs or does not object within 30 calendar days of being so notified of the determination, the District Engineer may proceed to conclude his action on the permit application. The ACHP published guidelines in the **Federal Register** on 30 October 1978 (43 FR 5065–8) which the District Engineer should use in making effect determinations related to archeological resources.

9. *Adverse effect.* If an adverse effect determination is made by the District Engineer in consultation with the SHPO or if the Executive Director, ACHP, does not accept the District Engineer's no adverse effect determination, the District Engineer will request the comments of the ACHP pursuant to Section 106 of the National Historic Preservation Act (see 36 CFR 800.6). If, as a result of the consultation process (see 36 CFR 800.6(b)), it is concluded that the proposal would result in the irrevocable loss of significant cultural resource data, the District Engineer will formally advise the Secretary of the Interior (by notifying HCRS) of the extent to which such property may be lost if the proposed work is permitted. The District Engineer will request that the Secretary furnish, pursuant to the Preservation of Historical and Archeological Data Act of 1974, as amended, Pub. L. 93–291, 16 U.S.C. 469, et seq., plans for timely survey, recovery, and preservation of such property if, in the Secretary's opinion, it should be recovered and preserved in the public interest. The Secretary of the Interior has certain responsibilities and funding authority pursuant to Pub. L. 93–291 to conduct certain surveys and to undertake the recovery and preservation of scientific, prehistoric, historic or archeological data that may be irrevocably lost or destroyed by any Federal licensing activities and to compensate for damages resulting from construction delays or temporary loss of the use of non-Federal lands. Civil Works funds will not be expended under the regulatory program for such work. Non-Federal applicants may voluntarily elect to participate in such survey, recovery or preservation work.

If the significant data cannot or will not be recovered or preserved, the District Engineer will evaluate all factors in deciding whether or not the permit should be issued in the public interest. Upon reaching a decision, the District Engineer will notify the ACHP of the final action to be taken on the permit and the expected ultimate effect of the work on the National Register properties.

10. *Permit conditioning.* If the applicant accepts the results of the consultation process outlined in 36 CFR 800.6(b), the District Engineer will proceed to complete his action on the permit application in accordance with the results of the consultation process. The District Engineer will participate in ACHP's development of the Memorandum of Agreement prepared in accordance with 36 CFR 800.6(c) provided his commitments would not be inconsistent with Department of the Army regulatory authorities. The District Engineer will include any appropriate conditions in the permit, if issued, in accordance with § 325.4.

11. *Resources discovered during construction.* If the District Engineer finds or is notified after construction is started that a previously unidentified National Register property within the permit area will be affected by the construction, he normally will request (not require) the permittee to avoid or delay work which might affect such property and immediately notify HCRS and the SHPO. The District Engineer normally will not stop the construction nor seek an eligibility determination unless HCRS notifies the District Engineer that it will assume liability for delays in construction pursuant to its responsibility and authority under Pub. L. 93–291 or unless the permittee agrees that no compensation would be required. Upon receipt of such notification, the District Engineer will stop that portion of the work impinging on the discovered property and proceed in the same manner set forth above for properties reported during the application process period.

[FR Doc. 80-10133 Filed 4-2-80; 8:45 am]
BILLING CODE 3710-92-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FI-3453]

National Flood Insurance Program; Revision of Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

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 Auburn, Cayuga County, New York.

Due to recent engineering analysis, this proposed rule revises the proposed determinations of base (100-year) flood elevations published in 42 FR 54106 on or about October 4, 1977, and in the *Citizen*, published on or about August 29, 1977, and August 30, 1977, and hence supersedes those previously published rules.

DATES: The period for comment will be ninety (90) days following the second publication of this notice in a newspaper of local circulation in each commmunity.

ADDRESSES: Maps and other information showing the detailed outlines of the floodprone areas and the proposed flood elevations are available for review at the City Hall, 24 South Street, Auburn, New York. Send comments to: Mr. Bruce L. Clifford, Auburn City Manager, Memorial City Hall, 24 South Street, Auburn, New York 13021.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, Office of Flood Insurance, (202) 426–1460 or Toll Free Line (800) 424–8872, Room 5150, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: Proposed base (100-year) flood elevations are listed below for selected locations in the City of Auburn, New York, 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 44 CFR 67.4(a)) (presently appearing at its former Title 24, Chapter 10, Part 67.4(a)).

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

These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations are:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
New York	Auburn, City, Cayuga County	Hunter Brook	Corporate Limits (Downstream)	*648
			Approximately 100' upstream of Conrail	*656
			Footbridge (Upstream)	*662
			McIntosh Drive (Downstream)	*667
			McIntosh Drive (Upstream)	*672
			Schwartz Road (Upstream)	*674
			Approximately 130' upstream of Grant Avenue	*682
			Franklin Street (Downstream)	*711
			Franklin Street (Upstream)	*720
			Approximately 500' upstream of North Herman Avenue	*722
			Marvin Avenue (Downstream)	*728
			Marvin Avenue (Upstream)	*733
			Driveway (Downstream)	*760
			Corporate Limits(Upstream)	*762
		Hunter Brook Tributary No. 1	Corporate Limits (Downstream)	*667
			Approximately 910' upstream of Downstream Corporate Limits	*677
			Grant Avenue (Downstream)	*695
			Approximately 140' upstream of Grant Avenue	*705
			Prospect Street (Downstream)	*719
			Prospect Street (Upstream)	*724
			Corporate Limits (Upstream)	*760
		Hunter Brook Tributary No. 2	Confluence w/Hunter Brook	*720
			Approximately 1,150' upstream of confluence w/Hunter Brook	*724
		Cold Springs Brook	Corporate Limits (Downstream)	*557
			York Street (Upstream)	*569
			Old Railroad Grade (Downstream)	*573
			Old Railroad Grade (Upstream)	*588
			Approximately 1,025' upstream of Old Railroad Grade	*590
		Owasco Outlet	Canoga Street	*559
			Aurelius Street	*585
			Division Street	*626
			Washington Street	*649
			State Street	*661
			Route 5 & 20 Arterial	*666
			North Street	*667
			Lake Avenue	*690
			State Dam (Downstream)	*704
			State Dam (Upstream)	*716

(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 delegation of authority to Federal Insurance Administrator 44 FR 20963)

Issued: March 4, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-9948 Filed 4-2-80; 8:45 am]

BILLING Code 6718-03-M

44 CFR Part 67

[Docket No. FEMA-5728]

Revision of Proposed Flood Elevation Determinations for the City of North Las Vegas, Clark County, Nevada Under the National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

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 North Las Vegas, Clark County, Nevada.

Due to recent engineering analysis, this proposed rule revises the proposed determinations of base (100-year) flood elevations published in 44 FR 64470 on November 7, 1979 and in the *Las Vegas Review Journal*, published on or about October 31, 1979, and November 7, 1979, and hence supersedes those previously published rules.

DATES: The period for comment will be ninety (90) days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the floodprone areas and the proposed flood elevations are available for review at the City Hall, 2200 Civic Center Drive, North Las Vegas, Nevada 89030.

Send comments to: the Honorable Ray H. Daines, Mayor, City of North Las Vegas, City Hall, P.O. Box 4086, North Las Vegas, Nevada 89030.

FOR FURTHER INFORMATION CONTACT: Mr. R. Gregg Chappell, National Flood Insurance Program (202) 426–1460 or Toll Free Line (800) 424–8872, Room 5148, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: Proposed base (100-year) flood elevations are listed below for selected locations in the City of North Las Vegas, Nevada, 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 44 CFR 67.4(a)).

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

These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations are:

Source of flooding	Location	#Depth and *Elevation
Las Vegas Wash	Carey Avenue 50 feet downstream from centerline.	*1836
	Carey Avenue 50 feet upstream from centerline.	*1841
	Cheyenne Avenue 50 feet downsteam from centerline.	*1858
	Cheyenne Avenue 75 feet upstream from centerline.	*1865
	Losee Road 100 feet upstream from centerline.	*1915
	Intersection of Juelene Way and Lockwood Avenue.	*#1
	Intersection of Crawford Street and Judson Avenue.	*#1
	Intersection of Statz Street and Carey Avenue.	*#2
Unnamed Tributary to Las Vegas Wash.	Cheyenne Avenue at Centerline.	*1869
	Losee Road 50 feet upstream from centerline.	*1908
	Craig Road 50 feet upstream from centerline.	*1959
	Tillman Drive at centerline	*1997

(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 delegation of authority to Federal Insurance Administrator, 44 FR 20963)

Issued: March 17, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-9947 Filed 4-2-80; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 160

[CGD 80-021]

Distress Signals; Heptane Ignition Test for Hand Red Flares

AGENCY: Coast Guard, DOT.

ACTION: Proposed rules.

SUMMARY: This proposal would amend the Coast Guard approval specification for hand red flare distress signals. The amendments would eliminate the reference to merchant vessels in the subpart heading for this specification, and add the requirement for a heptane ignition test that is intended to measure the tendancy of the flares to start a fire on a boat. This is being proposed in order to make the hand red flare acceptable for use on recreational boats, and should be considered in conjunction with a proposal to change the equipment requirements for boats (CGD 80–021A) which appears elsewhere in this issue of the **Federal Register**.

DATES: Comments must be received on or before May 19, 1980.

ADDRESSES: 1. Comments should be mailed to the Commandant (G–CMC/24) (CGD 80–021), U.S. Coast Guard, Washington, DC 20593. Between the hours of 7:00 a.m. and 5:00 p.m. Monday through Thursday, comments may be delivered to, and are available for inspection and copying at the Marine Safety Council (G–CMC/24), Room 2418, U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington, DC 20593.

2. Copies of the National Bureau of Standards Report FR 3950 are available from Commandant, U.S. Coast Guard (G–MMT–3/12), Washington, DC 20593.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Markle, Office of Merchant Marine Safety (G–MMT–3/12), Department of Transportation, U.S. Coast Guard Headquarters, Washington, DC 20593, (202) 426–1444.

SUPPLEMENTARY INFORMATION: On December 17, 1979, the Coast Guard published a final rule making in the **Federal Register** that ammended ten specification regulations for pyrotechnic distress signals and line throwing appliances (44 FR 73055). One of those specification regulations was Subpart 160.021-Hand Red Flare Distress Signals for Merchant Vessels. As discussed in the preamble of that rule making, these devices were not approved for use on recreational boats owing to the need to determine the most accurate way to test the hazardous potential of the hot slag expelled by burning flares. The preamble described tests that involved the burning of flares over newspaper and over heptane. Comments were solicited on whether one or both of these tests should be adopted. No comments have been received since publication of the rule making. The Coast Guard has determined that the heptane ignition test is an appropriate way to measure the hazards of hot slag. This notice proposes the addition of such a test.

The National Boating Safety Advisory Council has been consulted and its opinions and advice have been considered in the formulation of this proposed amendment. The transcripts of the proceedings of the National Boating Safety Advisory Council at which this proposed amendment was discussed are available for examination in room 4224,

U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington, DC. The minutes of the meetings are available from the Executive Director, National Boating Safety Advisory Council, c/o Commandant (G–BA/42), U.S. Coast Guard, Washington, DC 20593.

Interested persons are invited to participate in this proposed rule making by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD 80–021) and the specific section of the proposal to which their comments apply, and give reasons for the comments. The proposal may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rule making process.

Draft Evaluation

A Draft Evaluation has been prepared for these regulations in accordance with the Department of Transportation's Regulatory Policies and Procedures published in the **Federal Register** on February 26, 1979 (44 FR 11034). That document requires that the evaluation quantify, to the maximum extent practicable, the estimated cost of the regulations to the private sector, consumers, and federal, state and local governments, as well as the anticipated benefits and impact of the regulations.

This proposal is expected to result in an initial cost of about $40,000 and a recurring annual cost of about $1,000. These costs will be imposed directly on the private sector (the manufacturers of the flares). The manufacturers are expected to pass the costs through to the ultimate consumers of the flares in the form of price increases; however, because of the large number of flares that are expected to be produced, the price increase for an individual flare will be negligible. There is no effect on federal, state, and local governments except in their capacities as consumers of the flares. The primary benefit identified for the proposal is the increased safety for users of hand red flares.

The Draft Evaluation has been included in the public docket for this rule making, and may be examined at the Marine Safety Council (G–CMC/24) at the address listed in the ADDRESSES section.

Drafting Information

The principle persons involved in drafting these regulations are: Mr. Robert Markle, Office of Merchant Marine Safety, and Mr. Coleman Sachs, Office of the Chief Counsel.

Discussion of the Proposed Regulations

This proposal would amend Subpart 160.021 of Title 49 of the Code of Federal Regulations, which contains a specification for hand red flare distress signals. The amendments would change the title of the subpart to delete the words "for merchant vessels" and would add a heptane ignition test to the technical tests that are presently required for the device.

One source of concern to the Coast Guard since the beginning of the project to require visual distress signals on boats has been the safety of pyrotechnics, and in particular the safety of hand held flares that expell hot slag as they burn. This has been a topic of discussion at public meetings of the National Boating Safety Advisory Council over the past few years. The problem was addressed in the notice of proposed rule making for the project amending distress signal specifications (CGD 76–048a, 43 FR 49445, October 23, 1978) which included a test of the hot slag hazard that used newspaper as a test medium. Layers of newspaper were to be placed under the burning flare to catch the hot slag. If the newspaper caught fire or if the slag scorched more than half of the paper, the flare failed the test. Several comments on the proposed test expressed the opinion that newspaper lacks sufficient uniformity to be a reliable test medium and that it does not realistically simulate any particular material or hazardous condition that exists on recreational boats. Furthermore, the Coast Guard found that the newspaper was often ignited by an accumulation of slag in one spot, a condition that resulted from the flare being set in a fixed position. This would not be likely to occur if the flare were handled by an individual in a distress situation. After consideration of the matter, the Coast Guard decided to investigate possible alternatives.

The Coast Guard contracted the National Bureau of Standards (NBS) to run a series of hand flare tests that involved burning flares over newspapaer and over heptane. Heptane is one of the components of gasoline, and is used as a standard test fuel to represent gasoline. Thus heptane appears to provide a closer approximation of the fire hazard found on gasoline powered boats. After the testing had been completed, a demonstration was held at NBS for the purpose of showing the results of the test program to the Visual Distress Signal Subcommittee of the National Boating Safety Advisory Council and any interested members of the public. The results of the testing are summarized in NBS Report FR 3950 which is available in single copies without charge from the Coast Guard at the address indicated in the addresses section of this notice.

While the results of the testing were being analyzed, the Coast Guard decided to publish final rules for visual distress signals on boats without the hand flare listed as an acceptable item (CGD 76–183, 44 FR 73021, December 17, 1979). At the same time, the revised specification for the hand flare was published without a hot slag test (CGD 76–048 a & b, 44 FR 73055, December 17, 1979). This final rule included a discussion of the options open to the Coast Guard with regard to a test for hot slag.

The Coast Guard has concluded its analysis of the NBS testing. It has decided that a test using a layer of heptane floating on top of water is the most appropriate test available for determining the tendency of hot slag to start an explosion and fire, the hazard that has been of greatest concern to the Coast Guard. The heptane will burst into flame when flaming or glowing particles or sparks pass through the vapor layer that forms above it. The newspaper test was not as sensitive to this hazard as the heptane test. The consequence would be that a flare that poses an explosion hazard in the presence of gasoline vapors might not be rejected by a newspaper test. One other advantage is that heptane is not sensitive to the accumulation of slag in one spot. This notice proposes the addition of a heptane ignition test essentially as it was performed by the National Bureau of Standards.

The Visual Distress Signal Subcommittee of the National Boating Safety Advisory Council has recommended that the Coast Guard consider the need for an additional test to determine the potential of a flare to ignite the surface of materials found on recreational boats. The subcommittee feels that such a surface burning test, by augmenting the heptane test, would provide an added measure of safety for devices approved for use on boats. The Coast Guard has not included a surface burning test in this proposal, as its primary concern is with fires or explosions caused by ignited gasoline vapors, a matter that it feels is

adequately addressed by the heptane test alone.

The Coast Guard is not convinced that there is a significant risk of hot slag igniting materials used in boat construction. A series of tests of safety hazards associated with the use of flares on recreational boats was conducted for the Coast Guard in 1977. These revealed that flares would char, but not ignite painted wood, varnished wood, and fiberglass. These are the types of material on a boat that would provide the most likely surfaces over which flares would be burned. This finding would appear to reduce the necessity for including a surface burning test in the approval process for hand red flares. The results of the test series from which this information was taken are summarized in report No. AD A049 969, available from the national Technical Information Service, Springfield, Virginia 22151.

An additional factor that contributed to the Coast Guard's decision against proposing a surface burning test is the absence of any standard reference material suitable for laboratory testing. The extreme variations that would exist in any samples selected to represent material found on boats would tend to negate the value of the test results.

In proposing the addition of a heptane test, The Coast Guard is motivated primarily by its perception of the hazards that might exist on recreational boats. No accident data could be found that positively and clearly indicate that hot slag dripping from a flare poses any real and significant danger on a boat. Despite a Coast Guard requirement for hand red flares on commercial vessels, A Coast Guard Auxiliary requirement for flares on boats examined for a Courtesy Motorboat Examination Decal, a New York state law that requires flares on boats over 18 feet, and repeated attempts by the Coast Guard to solicit specific accident or hazard data in previous rule makings, and in open meetings with the National Boating Safety Advisory Council and the National Association of State Boating Law Administrators, not a single real world incident has been brought to our attention in which use of a hand flare caused a fire or explosion, or other significant harm. Despite this, the Coast Guard feels that, since most recreational boats use gasoline for fuel, a potential risk exists that justifies the minimal costs of this proposal.

Should this proposal be adopted as a final rule, the Coast Guard is considering making it effective 90 days before the effective date of its companion project (CGD 80-021A) that would add hand red flares to the list of visual distress signals approved for use on recreational boats. It would be advantageous to flare manufacturers and members of the boating community alike if hand red flares could be used as accepted devices as of January 1, 1981, the effective date for the regulation covering other visual distress signals approved for use on boats. This would avoid placing the manufacturers of hand red flares at a competitive disadvantage, and would relieve boaters who prefer to carry hand red flares from having to purchase other devices. If this amendment to the specification regulation were to become effective on October 1, 1980, it is anticipated that manufacturers will have sufficient time to supply the market by January 1, 1981 with flares that pass the heptane test. Comments are specifically solicited on whether this timetable can be realistically met.

As the heptane ignition test is being proposed for all hand held flares approved under Subpart 160.021, it would also apply to flares carried on merchant vessels, even though the Coast Guard's primary concern in the past has been the safety of flares used on recreational boats. The Coast Guard feels it is appropriate to make the test a requirement for flares used on merchant vessels as well for the following reasons:

(a) There has been concern about the safety problems associated with hot slag from hand flares used on merchant vessels. These flares could be used in and around fire hazard areas in merchant vessel casualties, especially if the crew was not aware of the potential for fire.

(b) The flares are part of the equipment pack of inflatable life rafts which are constructed of rubberized fabrics that are susceptible to fire.

(c) At least one type of approved hand held flare can already pass the heptane ignition test, indicating that others that fail the test may be able to pass it by alteration of the manufacturer's production methods, rather than complete redesign of the flare. There is no indication that a flare which passes the heptane ignition test will be significantly more expensive to manufacture than one that does not, eliminating cost as the basis for approving separate devices.

(d) Confusion might result if two similar Coast Guard approved flares were commercially available, only one of which could be used on recreational boats.

In consideration of the foregoing, the Coast Guard proposes to amend Part 160 of Title 46 of the Code of Federal Regulations as set forth below.

1. By revising the heading of Subpart 160.021 to read as follows:

Subpart 160.021—Hand Red Flare Distress Signals

2. By adding a new paragraph (d)(8) to 160.021–4 to read as follows:

§ 160.021–4 Approval and production tests.

* * * * *

(d) *Technical tests.* * * *

* * * * *

(8) *Heptane ignition.* (i) A metal pan must be used to hold a layer of water at least 12 mm (½ in.) deep with a layer of technical grade heptane on top of the water. The pan must be at least 1 m (39 in.) square with sides extending between 175 mm (7 in.) and 200 mm (8 in.) above the surface of the water. The amount of heptane used to form the layer must be 2.0 liters per square meter of pan area (6.25 fluid ounces per square foot).

(ii) The test must be conducted in a draft-free location. The ambient temperature, the temperature of the water, and the temperature of the heptane must all be between 20°C (68°F) and 25°C (77°F) at the time of the test.

(iii) The signal under test must be held with the flame end pointing upward at an angle of approximately 45°, 1.2 m (4 ft.) directly above the center of the pan. The signal must be ignited as soon as the heptane is observed to spread out over the water in a continuous layer. The signal must be allowed to burn completely, and must remain in position until it has cooled.

(iv) The heptane must not be ignited by the flare or by material from the flare.

(46 U.S.C. 481, 49 U.S.C. 1655(b)(1), 49 CFR 1.46(b)).

Dated: March 27, 1980.

Henry H. Bell

Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety

[FR Doc. 80-10151 Filed 4-2-80; 8:45 am]

BILLING CODE 4910-14-M

Research and Special Programs Administration

49 CFR Part 192

[Docket No. PS-67; Notice 1]

Transportation of Natural and Other Gas by Pipeline; Interior Piping

AGENCY: Materials Transportation Bureau (MTB).

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: This Advance Notice of Proposed Rulemaking invites comments relative to the need for Federal safety regulation of gas piping located inside buildings, whether these buildings be classified as commercial, industrial, a domicile, or places of congregation such as auditoriums, churches, or schools. Interior piping upstream from gas meters is currently subject to Federal or State regulatory authority as well as local building codes, and compliance with Federal requirements may be inappropriate.

DATE: Comments must be filed by August 1, 1980. Late filed comments will be considered as far as practicable.

ADDRESS: Comments should identify the docket and notice numbers and be submitted in triplicate to the Docket Branch, Materials Transportation Bureau, Department of Transportation, 400 7th Street, S.W., Washington, DC 20590. Comments will be available at the Docket Branch, Room 8426. The Docket Branch is open Monday through Friday from 8:30 a.m. to 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Robert F. Langley, 202–426–2082.

SUPPLEMENTARY INFORMATION: The National Transportation Safety Board (NTSB) in safety recommendation P–76–10 and pipeline accident report NTSB–PAR–76–2 issued on April 19 and February 19, 1976, respectively, recommended that the MTB amend 49 CFR Part 192 to define more realistically an operator's responsibility for gas piping inside buildings. In this report (a copy of which is in the docket and may be obtained from the National Technical Information Service), NTSB described an accident which occurred in an office building in New York City.

The report stated that:

"At 6:57 a.m. on April 22, 1974, a massive, low order explosion demolished the west wall of a 25-story commercial building at 305 East 45th Street, New York, New York. The structure of the adjacent building was damaged and glass was broken in other buildings in the area. Glass fragments and slivers were blown into 46th Street, where they lay 1-inch deep in places. No persons were killed, but more than 70 persons were injured."

"The National Transportation Safety Board's investigation showed that a 6-inch service line located in the basement of the building had been struck from below and severed by a ruptured hydropneumatic pressure tank installed directly underneath. Gas at 7-inches of water column flowed at 54,000 cubic feet per hour from the open end of the separated service line. Gas leakage continued for about ½ hour. Gas odors finally were noticed by a building occupant, but the building exploded before any mitigative efforts took place.

"The 6-inch service line in the basement was considered by the Office of Pipeline Safety to be a gas distribution main and therefore under the Federal regulation 49 CFR Part 192.3. The New York State Public Service Commission's regulation, 16 NYCRR 255.1855, maintains that the pipeline operator's jurisdiction ends at the first fitting inside the wall of a customer's structure. This is based on the impracticability of a pipeline operator's trying to operate and maintain thousands of feet of gas piping inside the walls and ceilings of thousands of buildings within the State."

Current Federal Regulation of Interior Piping

The Federal gas pipeline safety standards in Part 192 apply to operators of gas pipeline systems in or affecting interstate or foreign commerce other than rural gathering systems. As the term operator is defined in § 192.3, it includes both public gas utilities who sell and transport gas to customers and customers of such utilities who purchase gas for resale rather than their own consumption. In this latter category of operators are landlords and public housing authorities who sell and distribute gas to tenants in connection with the lease of real property (dwelling units) and also membership associations who sell and distribute gas to residents of housing cooperatives or condominiums.

In accordance with the definition in § 192.3 of the term "service line," an operator's responsibility for compliance with the Federal standards extends to the outlet of each customer meter (the meter that measures gas transferred to a customer) or to the connection of operator-owned piping with the customer's piping, whichever is farther downstream. This jurisdictional limitation may encompass interior piping as well as the underground or exterior piping that normally forms the bulk of a gas distribution system.

Regarding the extent to which Part 192 applies to interior piping under the "service line" definition, MTB has made the following general interpretations:

(1) Where a customer meter is located outside a building, the customer's piping is considered to begin no farther downstream than the wall through which the pipeline enters the building.

(2) Where a customer meter is located inside a building, the piping located upstream from the outlet of the meter is subject to Part 192.

(3) In an apartment complex consisting of several buildings, the underground and exterior pipelines are a distribution system subject to Part 192.

(4) In a distribution system that comprises interior piping only or primarily interior piping, as where an exterior "master meter" measures gas that is then transported throughout a single multiple dwelling building, and there are no exterior pipelines serving other buildings, the system is not subject to Part 192. In this situation the "master meter" is considered a "customer meter" for purposes of the "service line" definition in section 192.3.

These interpretations can be generalized to say that Part 192 applies to distribution systems that comprise exterior and underground pipelines and only to interior segments of such systems that are located upstream from customer meters. In the absence of customer meters, Part 192 jurisdiction ends no farther downstream than the building wall. The basis for this generalized interpretation lies in the legislative history of the Natural Gas Pipeline Safety Act of 1968, which shows Congressional concern for the safety of exterior and underground systems, the impracticality of determining ownership of piping inside buildings, and the fact that interior piping must meet the standards of local building codes. Interior segments of pipeline up to the meter are covered because normally the operator controls the meter and ownership of gas does not pass from the operator to the customer until the gas leaves the meter.

Two examples of the application of Part 192 to interior piping are: (1) placement of meters on the upper levels of buildings, and (2) piping routed through metered buildings to get to other buildings, such as in apartment complexes.

Purpose of this Notice

MTB recognizes that a large portion of gas pipelines inside buildings that is currently subject to Part 192 is behind walls and generally inaccessible to an operator after construction of a building. This situation makes compliance with many of the applicable safety requirements in Part 192 difficult because they were adopted with exterior, primarily underground piping in mind. Likewise, it is difficult for Federal and State pipeline safety inspectors to monitor the compliance of interior gas piping with applicable pipeline safety standards. MTB, by means of the following questions in this Advance Notice, wishes to stimulate answers to the issue raised by NTSB and to the need for continued Federal regulation of interior piping.

I. Local Building Codes as Standards for Design and Installation of Interior Gas Piping

A. To what extent do local building codes govern the design, installation, and testing of interior gas piping?

B. Are the safeguards adequate?

C. Should the Federal standards for design, installation, and testing of interior gas piping continue to apply in spite of local building code requirements?

D. Should the Federal standards be amended to apply only to accessible interior piping components such as meters?

E. Where local building codes do not apply to interior gas piping or the code provisions are inadequate, should the Federal standards continue to apply until local code provisions are adopted or improved to provide an acceptable level of safety?

F. Should operators be encouraged to seek adoption of better local building codes for gas piping and enforcement of such codes, such as by providing an exemption from Federal requirements where adequate local codes exist?

G. What should be the measure of building code adequacy?

H. If the Federal standards were amended to limit their application in areas of design, installation, and testing in favor of local code provisions, should operators be required to make thorough inspections (visually and by pressure test) of interior piping before allowing gas to flow into the system? It is recognized that a total visual inspection may be difficult, and for certain construction, would have to be done in stages as construction progresses.

II. The "National Fuel Gas Code" as Standards for Operation and Maintenance of Interior Gas Piping

MTB is also concerned that local building codes, if they are to provide for public safety in lieu of the Federal standards, may not require proper operation and maintenance of interior gas piping. For example, the performance of leakage surveys as required by § 192.723 might bring to light situations which could cause accidents like the one related above in the NTSB report.

The National Fire Protection Association (NFPA) states in the preface and the history of the "National Fuel Gas Code" (NFPA 54) that the document offers general criteria for the installation, operation, and maintenance of gas piping and gas equipment on customers' premises. The "National Fuel Gas Code" was developed from American National Standards Institute (ANSI) codes and from NFPA standards already in existence. The standards of NFPA 54 were not incorporated by reference in Part 192 when the Federal standards were adopted because the topics covered were generally thought to be outside the scope of Part 192. While this is still true regarding the installation of gas appliances and utilization equipment, the subsequent interpretations of Part 192, based on the "service line" definition (See Amdt. 192–13, 38 FR 9084, April 10, 1973), and the issue raised by NTSB make it opportune to consider the suitability of NFPA 54 as a referenced Federal standard or alternative regulation for interior piping.

A. To what extent do local building codes govern the operations and maintenance of interior gas piping?

B. Should the standards as set forth in NFPA 54, Parts 1 and 2, as applicable to interior gas piping, be incorporated as regulations in Part 192?

C. If so, would the requirements be more appropriate or less burdensome than the Part 192 standards?

D. As an alternative, should regulations be developed in Part 192 which would encourage gas operators to actively lobby for building codes or other local regulations to incorporate the pertinent NFPA 54 standards?

III. Gas Detectors

Present technological developments in the art of flammable gas detection have advanced to the point where even leading mail order houses are offering reliable automatic gas leak detector alarms, similar to smoke detector alarms, for nominal sums.

A. Should operators of interior gas piping be required, either by local building codes or Federal regulations, to include gas detectors and alarms in the buildings served?

B. Should such a requirement apply instead of existing Part 192 requirements that may be difficult to meet inside buildings?

MTB would appreciate answers or comments on any or all of the above questions and ideas. While rule changes are not being proposed at this time, if a commenter feels that conversion of any of the above thoughts to Federal regulations would in any way add to a gas operator's cost of operation, the commenter should state actual costs (not generalities) expected to be involved. The derivation of the increased costs should include breakdowns, such as labor, materials, and overhead, with carrying charges listed separately.

(49 U.S.C. 1672; 49 CFR 1.53(a), Appendix A of Part 1 and Paragraph (b)(2) of Appendix A to Part 106).

Issued in Washington, DC, on March 26, 1980.

Cesar De Leon,

Associate Director for Pipeline Safety Regulation, Materials Transportation Bureau.

[FR Doc. 80-9883 Filed 4-2-80; 8:45 am]

BILLING CODE 4910-60-M

Federal Highway Administration

49 CFR Part 325

[BMCS Docket No. MC-62-1, Notice No. 80-3]

Compliance With Interstate Motor Carrier Noise Emission Standards

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: In response to a petition for rulemaking filed by Salt Lake County, Utah, and in settlement of a lawsuit filed by Salt Lake County against the Department of Transportation, this document proposes to amend the Interstate Motor Carrier Noise Emission Standards to allow a minimum measurement distance of 31 feet and to change the correction factor for a hard test site.

DATE: Comments must be received on or before August 1, 1980.

ADDRESS: Submit written comments, preferably in triplicate, to the docket number and notice number that appear at the top of this document, Room 3402, Bureau of Motor Carrier Safety (BMCS), 400 Seventh Street, SW., Washington, D.C. 20590. All comments received will be available for examination at the above address between 7:45 a.m. and 4:15 p.m. ET, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald J. Davis, Chief, Development Branch, BMCS, 202–426–9767; or Mr. Gerald M. Tierney, Office of the Chief Counsel, 202–426–0346, Federal Highway Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Interstate Motor Carrier Noise Emission Standards were published on October 15, 1975. The standards require a minimum distance of 35 feet for measuring the level of noise. This is the distance between the microphone location point and the microphone target point.

The regulations also state that when tests are made at a "hard" test site, a correction factor of 2 dB(A) is to be subtracted from the maximum sound level reading. This tolerance is specified

to ensure that unnecessary violations will not be issued.

On December 11, 1975, Salt Lake County, Utah, petitioned for a review of those requirements in the United States Court of Appeals, District of Columbia Circuit. Subsequently, as part of the settlement negotiations in that case, Salt Lake County petitioned for an amendment of 49 CFR 325.7 and 49 CFR 325.75(a). Under the Federal Highway Administration's rulemaking procedures, the petitioner asked that the minimum measurement distance specified in 49 CFR 325.7 be reduced from 35 feet to 31 feet. The petitioner also requested that the 2 dB(A) tolerance for the hard test site specified in 49 CFR 325.75(a) be deleted.

Salt Lake County contends that the minimum measurement distance should be reduced to 31 feet in order to allow communities to make use of additional measurement sites. They rely on a report by B. H. Sharp entitled "Research on Highway Noise Measurement Sites" as support for their position. They claim that their experience has been that measurements taken at less than 35 feet have proved to be both accurate and feasible.

The 35-foot minimum distance was established by the Federal Highway Administration because of the greater accuracy achieved in measuring at distances at or over 35 feet. Measurements at distances less than 35 feet are generally less accurate because of near-field acoustical effects. In addition, at closer distances, a passing truck cannot be approximated as a point source of noise, thereby invalidating certain theoretical source propagation models. Also, reflection effects from the ground tend to be exaggerated at close in measurement distances. The result is that the accuracy of measurements taken at less than 35 feet is unpredictable.

Salt Lake County's second concern is that the 2 dB(A) correction factor is unnecessary. It is their contention that at close distances differences in noise levels due to ground surfaces, either hard or soft, are negligible. It has been their experience that this correction factor is unnecessary.

The purpose of adding or subtracting a correction factor is to equate the sound level reading actually generated by the motor vehicle to the sound level reading it would have generated if the measurement had been made at a standard test site.

Pursuant to a joint motion for voluntary dismissal filed by the Department of Transportation and Salt Lake County, the court, on September 20, 1979, issued an order terminating Salt Lake County's legal actions against the Department of Transportation. As part of the settlement agreement that led to that order the Federal Highway Administration agreed to issue a Notice of Proposed Rulemaking concerning 49 CFR 325.7 and 49 CFR 325.75(a). This Notice is being issued to satisfy the requirements of that agreement and to solicit comments concerning the issues raised in Salt Lake County's petition for rulemaking.

In view of the above, the Bureau of Motor Carrier Safety proposes the following amendments to 49 CFR Part 325:

§ 325.7 [Amended]

1. Amend Table 1 in § 325.7 by adding the following entry to appear as a new first entry to read as follows.

Table 1.—*Maximum Permissible Sound Level Readings (Decibel (A))*[1,2]

If the distance between the microphone location point and the microphone target point is—	Highway operations test				Stationary tests	
	Soft site		Hard site		Soft site	Hard site
	35 mi/h or less	Above 35 mi/h	35 mi/h or less	Above 35 mi/h		
31 ft (9.5 m) or more but less than 35 ft (10.7 m)	90	94	92	96	90	92
*	*	*	*	*	*	*

§ 325.75 [Amended]

2. Amend § 325.75 by deleting and reserving paragraph (a).

Note.—The Federal Highway Administration had determined that this document does not contain a significant proposal according to the criteria established by the Department of Transportation pursuant to E.O. 12044. The anticipated impact of this proposal is so minimal that it does not warrant the preparation of a full regulatory evaluation.

(42 U.S.C. 4917, 49 CFR 1.48(b) and 301.60)

Issued on: March 24, 1980.

Robert A. Kaye,

Director, Bureau of Motor Carrier Safety.

[FR Doc. 80-9607 Filed 4-2-80; 8:45 am]

BILLING CODE 4910-22-M

Urban Mass Transportation Administration

49 CFR Part 640

[Docket No. 80-A]

Bus Rehabilitation Program—Policy and Procedures; Extension of Comment Period

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Extension of comment period.

SUMMARY: In the Federal Register of February 11, 1980 (45 FR 9244), the Urban Mass Transportation Administration issued a notice of a proposed policy and guidelines concerning Federal grants to aid in bus rehabilitation projects of mass transit systems. Interested parties were given until March 27, 1980 to submit comments. Because of extensive interest in this action and many requests for extension of the comment period, a new closing date for comments has been established and is set out below.

DATE: Comments must be received on or before May 2, 1980.

ADDRESS: Comments must be submitted to UMTA Docket No. 80-A, 400 7th Street, S.W., Washington, D.C. 20590. All comments and suggestions received will be available for examination in room 9320 at the above address between 8:30 a.m. and 5:00 p.m., Monday through Friday. Receipt of comments will be acknowledged by UMTA if a self-addressed, stamped postcard is included with each comment.

FOR FURTHER INFORMATION CONTACT: Charlotte Adams, Office of Program Analysis, (202) 472-6997.

Dated: March 28, 1980.

Theodore C. Lutz,

Administrator.

[FR Doc. 80-10139 Filed 4-2-80; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 655

Atlantic Squid Fishery; Proposed Regulations

AGENCY: National Oceanic and Atmospheric Administration (NOAA)/ Commerce.

ACTION: Approval and partial disapproval of amendment to the Atlantic squid fishery management plan.

notice of proposed rulemaking, and request for comments.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, has approved, with the exception of one provision, an amendment to the fishery management plan for the Squid Fishery of the Northwest Atlantic Ocean (FMP). Proposed regulations to implement the management measures contained in the amendment would: (1) Establish an initial level of harvest for United States vessels catching Atlantic squid (*Illex illecebrosus* and *Loligo pealei*); and (2) establish a reserve from which squid may be distributed to the domestic and foreign fisheries.

All regulations governing the foreign fishery for squid contained in 50 CFR Part 611 are continued in effect without change.

The proposed amendments to Part 655, which include technical changes to the Atlantic squid regulations now in effect, are being published in the **Federal Register** as emergency regulations.

EFFECTIVE DATES: Comments on the proposed regulations and the amendment to the FMP are invited for a 45-day period. All comments must be submitted in writing on or before May 26, 1980.

ADDRESS: All comments on the amendment to the FMP and the proposed regulations should be sent to: Regional Director, National Marine Fisheries Service, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930. Mark: "Comments on Proposed Squid Regulations" on the outside of the envelope.

FOR FURTHER INFORMATION CONTACT: Allen E. Peterson, Jr., Regional Director, at the above address; telephone (617) 281–3600.

SUPPLEMENTARY INFORMATION: The FMP was prepared by the Mid-Atlantic Fishery Management Council (Council), and approved by the Assistant Administrator on June 6, 1979, in accordance with the Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. 1801 *et seq.* (Act). Final regulations implementing the FMP were published on December 31, 1979 (44 FR 77174). Those regulations established annual quotas on a fishing year basis (April 1–March 31) for domestic vessels harvesting *Illex Illecebrosus (Illex)* or *Loligo pealei (Loligo)*. The FMP was to expire on March 31, 1980.

On March 19, 1980, the Assistant Administrator approved, with one exception, an amendment to the FMP. The approved provisions of the amendment: (1) Extend the FMP indefinitely; (2) maintain the optimum yield (OY) for *Illex* at 30,000 metric tons (mt) and the OY for *Loligo* at 44,000 mt; (3) reduce the domestic annual harvest (DAH) of *Illex* from 10,000 mt to 5,000 mt and the total allowable level of foreign fishing (TALFF) of *Illex* from 20,000 mt to 12,000 mt; (4) reduce the DAH of *Loligo* from 14,000 to 7,000 mt and of *Loligo* from 30,000 mt to 18,000 mt; and (5) establish a reserve of *Illex* at 13,000 mt and a reserve of *Loligo* at 19,000 mt, which are available for distribution to the domestic and foreign fisheries.

Optimum Yield

Based upon the 1979 squid stock assessment, the Council has determined that the OY for *Loligo* should be maintained at 44,000 mt, and the OY for *Illex* be maintained at 30,000 mt. The OY for *Loligo* is equal to the maximum sustainable yield (MSY). The OY for *Illex* is 10,000 mt less than the MSY because scientific information for *Illex* is much less complete than for *Loligo*. The Council's approach to *Illex* is consistent with sound conservation and management principles and continues a cautious development of this fishery until biological and ecological information is developed further.

DAH, Reserve and TALFF

The Council has set the domestic annual harvest (DAH) at 5,000 mt for *Illex* and 7,000 mt for *Loligo*. These levels of DAH take into account not only past performance of U.S. fishermen in this fishery, but also changes in traditional fishing patterns and practices which the Council anticipates will take place. Because of the uncertainties concerning these changes, the Council believes that the most reasonable approach is to set a DAH which is as realistic as possible, and to establish reserves for the potential growth in the domestic fisheries.

With the creation of the reserves, the Council reduced the TALFF's for *Illex* from 20,000 mt to 12,000 mt and for *Loligo* from 30,000 mt to 18,000 mt. The Council recognizes that these reduced TALFF's could adversely impact foreign fishing. However, foreign nations can receive squid from the reserves during the fishing year to the extent that the domestic fisheries do not use the reserves.

The uncertainties as to the exact harvesting capacity of the domestic commercial fleet, the availability of foreign markets to domestic fishermen, and the Council's desire to provide an opportunity for expansion of the commercial squid for export, resulted in establishment of reserves of 13,000 mt for *Illex* and 19,000 mt for *Loligo*. Should the domestic fisheries harvest beyond the DAH during the fishing year, squid in the reserves are available to it. Squid may be allocated from the reserves to TALFF only to the extent that the reserves will not be harvested by the domestic fishermen.

An allocation procedure from reserve to TALFF must contain criteria which allow for use of the entire reserve, through absorption by DAH or transfer to TALFF. The Council's proposed procedures for reallocation from the reserve to TALFF for either species would have provided for a review of domestic fishing activities after six months of the fishing year had passed. If the Assistant Administrator had determined that the estimated harvest of either species for the fishing year would be less than 80 percent of the sum of its DAH and reserve, a portion of the reserve could have been allocated to TALFF.

The Assistant Administrator has reviewed the provision of the amendment which sets the criteria and procedures for the allocation of squid from the reserve to TALFF. He has found that this provision would prevent: (1) Timely in-season adjustments to TALFF; and (2) allocation of the entire reserve even if domestic harvesters are not likely to reach DAH. The Assistant Administrator has further determined that this provision is inconsistent with National Standard 1 of the Act, which requires that "Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery." Consequently, he has disapproved this provision of the amendment. In accordance with Section 304(a) of the Act, he has notified the Council, in writing, of his partial disapproval. The Council has 45 days from the date of notification to resubmit the provision. The regulatory section on allocation of the reserve will be proposed in the near future (see discussion below under "Proposed Regulations").

Proposed Regulations

The proposed amendments to the regulations would implement the conservation and management measures contained in the amendment. An allowable harvest of squid on a fishing year basis would be estimated at 30,000 mt for *Illex* and 44,000 mt for *Loligo*. Initial levels of domestic harvest would be set at 5,000 mt for *Illex* and 7,000 mt for *Loligo*. Reserves of 13,000 mt for *Illex* and 19,000 mt for *Loligo* would be established and would be potentially available for distribution to the domestic and foreign fisheries. In

addition, the proposed regulations would revise the criteria for closing the fishery.

Technical changes to the regulations currently in effect are also reflected in the proposed regulations. These changes are designed to establish uniformity in language among the regulations implementing fishery management plans proposed by the Council.

Two sections in the proposed regulations are "Reserved" and will be completed in the near future. Section 655.22 ("Allocation") will be proposed when the Assistant Administrator approves a mechanism which allocates squid from the reserve to TALFF in a manner which is consistent with the provisions of the Act. A regulatory procedure for reallocation from the reserve to DAH is unnecessary, since the portion of the reserve not allocated to TALFF is available to the domestic fishery.

Section 655.5(b)(2) ("Domestic squid processing capacity"), which will implement a provision of the original FMP, will be promulgated when the National Marine Fisheries Service, after consultation with industry, develops a report form and establishes a system to receive reports on capacity from squid processors.

Emergency Regulations

In accordance with Section 305(e) of the Act, the proposed regulations will be implemented as emergency measures in the Final Rule section of this same issue of the **Federal Register**. The Assistant Administrator has determined that the emergency action is necessary to provide conservation and management measures to govern fishing for squid until final regulations to implement the partially approved amendment are promulgated during May, 1980. A gap in the regulatory process during the early part of the 1980–1981 fishing year might have jeopardized the credibility, continuity, and effectiveness of the entire management system for this newly regulated fishery.

National Environmental Policy Act of 1969 (NEPA)

Development and implementation of this amendment have been deemed a major Federal action significantly affecting the quality of the human environment.

Executive Order 12044

For the purpose of Executive Order 12044 and NOAA Directive 21–24, the Administrator has made an initial determination that this action does not constitute a significant change to the regulations. The creation of reserves, which allow additional flexibility in the regulations so that optimum yield can be achieved, is considered a refinement but not a material or significant change to the regulations.

The amendment to the squid FMP is set forth below.

Signed at Washington, D.C., this 28th day of March, 1980.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

(16 U.S.C. 1801 *et seq.*)

Amendment #1 to the Atlantic Squid Fishery Management Plan

I. Abbreviations Used in This Document

CFR—Code of Federal Regulations.
DAH—Domestic Annual Harvest—the capacity of U.S. fishermen to harvest squid and their intent to use that capacity.
DAP—Domestic Annual Processing—the capacity of U.S. processors to process squid and their intent to use that capacity.
EIS—Environmental Impact Statement.
fathom—6 feet.
FCMA—Fishery Conservation and Management Act.
FCZ—Fishery Conservation Zone.
fishing year—the 12 month period beginning April 1.
FMP—Fishery Management Plan.
FRG—Federal Republic of Germany.
GDR—German Democratic Republic.
GIFA—Governing International Fishery Agreement.
ICNAF—International Commission for the Northwest Atlantic Fisheries.
km—kilometer.
mt—metric ton = 2204.5 pounds.
MSY—Maximum Sustainable Yield.
NMFS—National Marine Fisheries Service.
NOAA—National Oceanic and Atmospheric Administration.
OY—Optimum Yield.
PMP—Preliminary Fishery Management Plan.
RA—Regulatory Analysis.
SA—Subarea or Statistical Area.
Secretary—Secretary of Commerce.
SEIS—Supplemental Environmental Impact Statement.
TAC—Total Allowable Catch.
TALFF—Total Allowable Level of Foreign Fishing.

II. Summary

The Fishery Management Plan (FMP) for Atlantic Squid was approved by the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration (NOAA) on June 6, 1979. The FMP is for fishing year 1979–1980 (April 1, 1979–March 31, 1980). The basic purpose of Amendment #1 is to extend the FMP beyond fishing year 1979–1980.

The management unit for the FMP is all *Loligo pealei* and *Illex illecebrosus* under US jurisdiction in the northwestern Atlantic.

The objectives of the FMP are to:

1. Achieve and maintain optimal stocks for future recruitment.
2. Prevent destructive exploitation of squid species.
3. Minimize capture of nontarget species.
4. Achieve efficiency in harvesting and use.
5. Maintain adequate food supplies for predator species, recognizing that squid are also predators.
6. Minimize user conflicts.
7. Improve understanding of the condition of the stocks.
8. Encourage increased American participation in the squid fishery.

The management measures in the FMP are:

1. The 1979–1980 fishing year Optimum Yield (OY) for *Illex* is 30,000 metric tons (mt) and the 1979–1980 fishing year Optimum Yield for *Loligo* is 44,000 mt. The US capacity, both harvesting and processing, is 10,000 mt of *Illex* and 14,000 mt of *Loligo*. The foreign surplus (TALFF) is 20,000 mt of *Illex* and 30,000 mt of *Loligo*.
2. Any vessel owner or operator (foreign or domestic) desiring to catch squid or transport or deliver for sale any squid, must possess the appropriate valid registration or permit from the NMFS. This does not apply to individual US fishermen catching squid for their personal use.
3. Foreign fishing for squid is restricted to five designated areas.
4. Appropriate gear restrictions are imposed on foreign vessels fishing for squid.
5. Periodic reports on squid catches must be filed by foreign and domestic fishermen. Domestic dealers and processors must submit weekly reports on any transactions involving squid.
6. Incentives are provided, as discussed in Section XIII–8, to encourage development of the domestic squid industry.
7. A reassessment of the estimated US harvesting capacity for squid will be conducted annually.

Alternative management measures considered for Amendment #1 were:

1. Take No Action At This Time—This alternative would mean that the FMP would lapse. The NMFS would be required to prepare a Preliminary Management Plan (PMP). PMPs regulate foreign, but not domestic, fishermen. The effect of this alternative would be that the data that would be collected on domestic fishing and processing efforts as a result of this plan could not be collected as effectively, and assessments of the scope and development of the domestic fishery would not be as accurate as they would be with the FMP.
2. Continue The FMP For Fishing Year 1980–1981 With No Other Changes—This would mean that the FMP would need to be amended again prior to the beginning of fishing year 1981–1982. The following quantities would apply to fishing year 1980–1981:

	Metric tons	
	Illex	*Loligo*
OY	30,000	44,000
DAH	10,000	14,000
DAP	10,000	14,000
TALFF	20,000	30,000

3. Continue The FMP Without Time Limits With No Other Changes—This would eliminate the need for annual amendments to

the FMP unless necessitated by new biological or other data. The following annual quantities would result:

	Metric tons	
	Illex	*Loligo*
OY	30,000	44,000
DAH	10,000	14,000
DAP	10,000	14,000
TALFF	20,000	30,000

4. Provide A Reserve For *Illex* and *Loligo*—This concept is useful in a developing US fishery when accurate estimates of DAH and DAP cannot be made at the beginning of the fishing year. A portion of the OY would be placed in reserve and distributed during the fishing year to DAH and TALFF based on performance of the US harvesting sector and the most recent stocks assessments. This alternative could be combined with a one year extension, a two year extension, or an indefinite extension of the FMP. The following annual quantities would result:

	Metric tons	
	Illex	*Loligo*
OY	30,000	44,000
DAH	5,000	7,000
DAP	5,000	7,000
TALFF	12,000	18,000
RESERVE	13,000	19,000

5. Increase OYs—This may result in a reduction in future productivity of the stocks assuming a moderate stock-recruitment relationship. The relationship, however, between stock size and recruitment for either species is unknown. If recruitment is independent of spawning stock, increases in OYs could occur without risk to future productivity. Sufficient information is not now available with which to estimate the impact of increased OYs for *Loligo* or *Illex* until responses of the squid populations, particularly *Illex*, to present OY levels are observed.

6. Reduce OYs—This would decrease the chances of a reduction in future productivity of these stocks, but unless there is a strong stock recruitment relationship, the most likely result is that a resource available for harvest would be underutilized. This is in part predicated in the fact that the OYs selected for both *Loligo* and *Illex* take into consideration the short life spans of the species. Based on past catch estimates and trends in abundance, there is little justification for reducing the OYs for *Loligo* or *Illex* below these levels.

7. Combine The Squid And Butterfish FMPs—The Atlantic squid and butterfish fisheries are currently managed separately. The fisheries are related. Coordinated management of these fisheries would have substantive advantages in the long-run because it could facilitate comprehensive evaluation of both fisheries together. From an administrative standpoint, the regulatory process would be simplified by having one set of regulations rather than two sets of identical regulations. Merger should also result in administrative cost savings, not only in the area of regulations, but also in the amendment process.

8. Combine Objectives 5 and 7 Into A New Objective 5 And Designate Objective 8 As Objective 7—The new Objective 5 would read "Improve understanding of the condition of the stocks, including predator-prey relationships."

The Council has adopted Alternatives 4 and 8, with an indefinite extension of the FMP, as the final management measures for Amendment #1. In addition, the Council intends to combine the Squid and Butterfish FMPs as soon as possible following approval of the Butterfish FMP by the Secretary of Commerce.

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IV. Introduction

This Amendment No. 1 to the Atlantic Squid FMP is designed to extend the FMP beyond the end of fishing year 1979–1980 (March 31, 1980) and to make appropriate changes to Optimum Yield and quotas. The basic data about the fishery has not changed since the FMP was approved.

The lastest stock assessment is presented in Appendix I of Amendment No. 1. That assessment indicates that the condition of the stock does not warrant a change in the Maximum Sustainable Yields established in the FMP and does not place a biological constraint on the specification of Optimum Yields (OY) up to the MSY levels.

The alternatives presented in Amendment No. 1 are essentially refinements of the regime in the FMP.

V. Description of Stocks

The most recent stock assessment prepared by the Northeast Fisheries Center, NMFS, is presented as Appendix I to this Amendment. This document presents information regarding the squid stocks from the Gulf of Maine through the Middle Atlantic area, and updates the assessment presented in the original FMP. The assessment appended to this Amendment provides information on US and foreign catches, catch per unit of effort indices, 1978 spring, summer and autumn NMFS research trawl survey results, and 1979 spring survey results.

This assessment indicates the abundance of *Loligo* in 1979 to be probably of a magnitude "comparable to the long-term average". The NMFS survey data also suggest that *Illex* abundance may be at a near-record level in 1979. There are no data available from this assessment which would warrant, in the opinion of the Council, any chages from the Optimum Yields specified by the FMP.

VI. Description of Habitat

No data are available which would necessitate a change to this section of the FMP.

VII. Fishery Management Jurisdiction, Laws, and Policies

No data are available which would necessitate a change to this section of the FMP.

VIII. Description of Fishing Activities

No data are available which would necessitate a change to this section of the FMP.

IX. Description of Economic Characteristics of the Fishery

No data are available which would necessitate a change to this section of the FMP.

X. Description of Businesses, Markets, and Organizations Associated with the Fishery

No data are available which would necessitate a change to this section of the FMP.

XI. Description of Social and Cultural Framework of Domestic Fishermen and Their Communities

No data are available which would necessitate a change to this section of the FMP.

XII. Determination of Optimum Yield

XII–1. Specific Management Objectives

The Mid-Atlantic Council has adopted eight objectives to guide management and development of the squid fishery in the northwestern Atlantic. They are:

1. Achieve and maintain optimum stocks for future recruitment.
2. Prevent destructive exploitation of squid species.
3. Minimize capture of nontarget species.
4. Achieve efficiency in harvesting and use.
5. Maintain adequate food supply for predator species, recognizing that squid are also predators.
6. Minimize user conflicts.
7. Improve understanding of the condition of the stocks.

8. Encourage increased American participation in the squid fishery.

XII-2. Description of Alternatives

Alternative management measures considered for Amendment No. 1 were:

1. *Take No Action At This Time*—This alternative would mean that the FMP would lapse. The NMFS would be required to prepare a Preliminary Management Plan (PMP). PMPs regulate foreign, but not domestic, fishermen. The effect of this alternative would be that the data that would be collected on domestic fishing and processing efforts as a result of this plan could not be collected as effectively, and assessments of the scope and development of the domestic fishery would not be as accurate as they would be with the FMP.

2. *Continue The FMP For Fishing Year 1980–1981 With No Other Changes*—This would mean that the FMP would need to be amended again prior to the beginning of fishing year 1981–1982. The following quantities would apply to fishing year 1980–1981:

	Metric tons	
	Illex	Loligo
OY	30,000	44,000
DAH	10,000	14,000
DAP	10,000	14,000
TALFF	20,000	30,000

3. *Continue The FMP Without Time Limits With No Other Changes*—This would eliminate the need for annual amendments to the FMP unless necessitated by new biological or other data. The following annual quantities would result:

	Metric tons	
	Illex	Loligo
OY	30,000	44,000
DAH	10,000	14,000
DAP	10,000	14,000
TALFF	20,000	30,000

4. *Provide A Reserve For Illex And Loligo*—This concept is useful in a developing US fishery when accurate estimates of DAH and DAP cannot be made at the beginning of the fishing year. A portion of the OY would be placed in reserve and distributed during the fishing year to DAH and TALFF based on performance of this US harvesting sector and the most recent stocks assessments. This alternative could be combined with a one year extension, a two year extension, or an indefinite extension of the FMP. The following quantities would result:

	Metric tons	
	Illex	Loligo
OY	30,000	44,000
DAH	5,000	7,000
DAP	5,000	7,000
TALFF	12,000	18,000
RESERVE	13,000	19,000

5. *Increase OYs*—This may result in a reduction in future productivity of the stocks assuming a moderate stock-recruitment relationship. The relationship, however, between stock size and recruitment for either species is unknown. If recruitment is independent of spawning stock, increases in OYs could occur without risk to future productivity. Sufficient information is not now available with which to estimate the impact of increased OYs for *Loligo* or *Illex* until responses of the squid populations, particularly *Illex*, to present OY levels are observed.

6. *Reduce OYs*—This would decrease the chances of a reduction in future productivity of these stocks, but unless there is a strong stock recruitment relationship, the most likely result is that a resource available for harvest would be underutilized. This is in part predicated on the fact that the OYs selected for both *Loligo* and *Illex* take into consideration the short life spans of the species. based on past catch estimates and trends in abundance, there is little justification for reducing the OYs for *Loligo* or *Illex* below these levels.

7. *Combine The Squid And Butterfish FMPs*—The Atlantic Squid and butterfish fisheries are currently managed separately. The fisheries are related. Coordinated management of these fisheries would have substantive advantages in the long-run because it could facilitate comprehensive evaluation of both fisheries together. From an administrative standpoint, the regulatory process would be simplified by having one set of regulations rather than two sets of identical regulations. Merger should also result in administrative cost savings, not only in the area of regulations, but also in the amendment process.

8. *Combine Objectives 5 And 7 Into A New Objective 5 And Designate Objective 8 As Objective 7*—The new Objective 5 would read "Improve understanding of the condition of the stocks, including predator-prey relationships."

XII-3. Analysis of Beneficial and Adverse Impacts of Potential Management Options

Alternative 1 would remove regulation of the US fishery. This could lead to overfishing as this fishery expands. It would remove the data reporting requirements on US fishermen and processors. Since this alternative would not regulate US fishermen and processors, there would be a governmental cost saving.

Alternatives 2 and 3 are similar in their impacts, except that Alternative 2 would require an amendment to extend the FMP beyond fishing year 1981–1982, even though no other changes were required. The primary adverse impact from these alternatives is that they could lead to a closure of the US fishery if landings reached the DAH level. US squid landings have been increasing, although data are too limited to warrant increases in DAH and DAP above those proposed at this time. The Council has conducted a limited survey of processors and believes that the DAP quantities specified are reasonable. Since the TALFFs specified in these alternatives are the same as the TALFFs in the original FMP, the impacts of these alternatives should not differ from those of the original FMP on foreign fishermen.

Alternative 4 is intneded to address the developing nature of the US fishery. While available data support conservative estimates of DAH and DAP, the developing nature of the US fishery leads to the conclusion that provision should be made for such development, even though it cannot be accurately projected. By including a Reserve, this possible growth in the US fishery is provided for. A portion of the Reserve not needed by the US fishery could be reallocated to TALFF if the latest stock assessments available at the time of reallocation indicate that such action is warranted. This alternative would have an adverse impact of foreign fishermen relative to the original FMP in that the initial TALFFs would be substantially smaller than the TALFFs in the original FMP. However, the condition of the stock (see Appendix I) does not justify an increase in the OYs proposed.

Alternatives 5 and 6 address the question of alternative OYs. The Council has concluded that, given the latest assessment of stock condition (Appendix I), there is no reason to change the OYs from those in the original FMP. Lowering the OYs could lead to wasted resources and increased OYs could lead to overfishing.

Alternative 7 has two advantages. The first is a governmental cost saving associated with one FMP and amendments thereto, one set of regulations, one set of reports, and one permit system rather than two. The second advantage is that the combination of the two FMPs could facilitate joint management of two related fisheries. For example, the TALFF in the original Butterfish FMP was primarily intended to meet foreign by-catch requirements in the *Loligo* fishery. This problem could be addressed in a more meaningful fashion if both species were managed jointly in one FMP . In addition, the developing US fisheries for both butterfish and squid seem to involve the same fishermen and processors. A joint FMP could greatly facilitate future impact assessments on the US fishery.

Alternative 8 is intended to address the lack of information on predator-prey relationships. Objective 4, "Maintain adequate food supply for predator species, recognizing that squid are also predators" implies there is adequate knowledge so that management measures to achieve objective 4 could be implemented. The revised objective "improve understanding of the condition of the stocks, including predator-prey relationships" seems more realistic at this time.

XII-4. Tradeoffs Between the Beneficial and Adverse Impacts of the Preferred Management Option

The preferred option is a combination of alternatives 4, 7, and 8 with a multi-year extension of the FMP. This option would provide for growth of the US fishery. While the DAH for *Illex* is 5,000 mt and the DAH for *Loligo* is 7,000 mt, the Reserve amounts added to DAH allow for a maximum US harvest of 18,000 mt of *Illex* and 26,000 mt of *Loligo*. The initial DAH and DAP estimates are considered reasonable, given available data. It must be noted that, in this FMP, processing is defined to include freezing.

Therefore, since virtually all squid is at least frozen, DAP is estimated equal to DAH. It must be recognized that this is an estimate based on the best data available to the Council at the time Amendment #1 was finalized and that during the implementation of the amended FMP the fishery may develop so that DAH exceeds DAP. Such difference should not be considered a conflict with the objectives of the amended FMP. For example, the management measures set forth in Section XIII–3 specifically provide for the development of joint ventures, the approval of which would require that DAH exceed DAP.

The Council recognizes that joint ventures for squid may be developed. Given the uncertain rate of development of the domestic harvesting and processing sectors, it is impossible to reasonably estimate any differnce between DAH and DAP at this time. However, the combined values of the DAHs plus Reserves for both species should permit the development of the US fishery as well as any joint ventures. The Council's first priority is the development of the US harvesting and processing sectors in a coordinated fashion. However, it is the Council's intent that joint ventures be considered for both species on a case by case basis, with the primary criterion for approval of such joint ventures being the extent to which domestic processors can process in the catch of US harvestors. If, during the life of the plan, US harvesting capacity in fact exceeds US processing capacity and if the development of a joint venture to use the excess harvesting capacity would not harm the development of the US processing sector, such joint venture proposals could be considered.

It is recognized that the initial TALFFs specified under the preferred option could have an adverse impact on foreign fishermen relative to the quantities specified in the original FMP. However, there is a possibility that foreign fishermen would receive some of the Reserve. This management strategy seems justified in light of the need to address the needs of the developing US fishery while not setting OYs at levels that would lead to overfishing.

XII.5. Specification of Optimum Yield

The Mid-Atlantic Fishery Management Council has determined that the annual optimum yield of *Loligo* should be set at 44,000 mt. This is equal to the best conservative estimate of MSY for this species. The Mid-Atlantic Council has determined that OY should be equivalent to MSY for this species for the following reasons: (1) The best and most recent scientific evidence indicates that this species is neither overfished nor depleted in abundance, (2) the short life-span of this species suggests that the portion of the MSY not taken through fishing would be lost (with no resultant benefit to future recruitment) through natural mortality, and (3) overall demand for squid is great and probably surpasses the combined OYs described in the FMP. Thus, harvesting at the MSy level should allow for the greatest benefit to the nation while guarding against overfishing.

Scientific information for *Illex* is such less complete than that for *Loligo*. Information available to date suggests that the MSY for *Illex* in ICNAF SA 5 and 6 (equivalent for all practical purposes to the management unit specified for this FMP) may be approximately 40,000 mt for a moderate to strong stock-recruitment relationship. In some years this amount may be too high, based on USSR estimates of stock size and the application of a 37% exploitation rate (section V–2 of the original FMP).

The Council has determined that an *Illex* harvest of 30,000 mt will be the Optimum Yield. The Council has determined that this is the greatest harvest consistent with sound conservation and management principles. The following factors were taken into consideration in the establishment of this OY: (1) Uncertainties as to *Illex* population structure in the northwest Atlantic and stock-recruitment relationship; (2) environmental considerations stemming from the uncertainties of (1) and recognition of the important role *Illex* plays as prey in the ecosystem; (3) recognition of the fact that current NMFS autumn and spring survey systems are suboptimal for this species and produce untimely biological data for *Illex;* (4) recognition of the developing nature of this fishery; (5) the intent to accomodate to a limited degree the foreign squid fishery which will experience declines in its *Loligo* catches over historic levels. This OY for *Illex* is greater than the peak total catch of this species in ICNAF SA 5 and 6, while simultaneously it is conservative biologically.

It is the Council's intention to provide for a cautious development of this fishery, at least until such time as biological and ecological information about this species is more fully developed.

The Council made these determinations of Optimum Yield in light of the biological and socio-economic data and analyses presented earlier in the plan. In estimating DAH the Council has considered not only the historical domestic harvest but also the development of the fishery. The Council has been advised by fishermen and through the recently completed survey of processors that a number of US vessels will be added to this fishery in the near future.

In setting the initial DAH for *Loligo* at 7,000 mt and for *Illex* at 5,000 mt, the Council has attempted to reflect not only the past performance of US fishermen in this fishery, but the anticipated change in traditional fishing patterns and practices which the Council reasonably anticipates will take place in the next few years. The Council has set these levels in accordance with the provisions of a Reserve of 19,000 mt for *Loligo* and 13,000 mt for *Illex* to allow for an expansion of domestic effort in the fishery. As shown in Figure 1 and Tables 1 and 2, US squid landings have been increasing with catches for the firs nine months of 1979 about 3 times and 2.5 times the 16-year average for *Loligo* and *Illex*, respectively.

Traditionally, squid has usually been harvested only as an incidental catch to commercially more valuable species. Consequently, domestic catch has been small in comparison with the total catch of squid by vessels of foreign nations. For example, the US domestic catch of squid in both 1975 and 1976 amounted to only five percent of the total catch of squid in the northwest Atlantic Ocean (ICNAF SA 5 and 6). Recently, however, squid has become a more sought after commercial species due, at least in part, to an increase in ex-vessel price. The average ex-vessel price of squid has been on the rise for a number of years. Within the past year or so, the availability of foreign markets to US-caught squid has caused a dramatic increase in this price. The Council believes that ex-vessel squid prices will remain at attractive levels. This belief stems from the continuing great demand for squid by foreign markets and the diminuation in allocations of squid in the northwest Atlantic Ocean available to foreign nations as represented by the TALFF.

In the past, top quality squid has commanded a good price, competitive with other finfish species so long as total quantity remained small. As a result, domestic fishermen have had no incentive to harvest squid intensely. Whenever catch rates increased even slightly, significant decreases in price would occur because of the domestic market's inability to absorb increased product supply. With an expanded market from exports, ex-vessel price structure of *Loligo* and *Illex* should change. So long as domestic fishing interest can assure foreign markets of an adequate product supply meeting all specified product criteria, prices will remain at stable levels throughout the fishing season. This should be an added inducement to develop further the domestic squid fishery.

Aside from the incentive represented by current squid ex-vessel prices, the Council expects the current restrictive quotes for regulated species such as groundfish and surf clam and a decline in abundance of presently non-regulated species such as scallop will provide inducement for fishermen and investors to transfer effort and capital into the squid fishery. The Council has been advised that significant numbers of vessels in the New England and Mid-Atlantic areas are currently being outfitted to fish exclusively for squid. In consequence, both the incidental nature and brief duration of the domestic fishery are expected to change. This will have a dramatic effect on the level of catch by domestic fishermen.

In addition to accommodating any increase in effort in the domestic squid fishery, the present level of domestic capacity is intended to provide for that part of the domestic catch which is as yet unquantified. Squid represent an important source of bait in the recreational fishery. While data on the recreational fishery are not well developed, reports indicate a minimum of 8,400 pounds of squid landed by private recreational anglers as bait in 1973 in the States of Massachusetts and Rhode Island alone. The Council believes that this figure, when expanded to include those unreported amounts of squid caught as bait by private recreational vessels coupled with the increased levels of recreational catch since 1973, may realistically be 50 mt for these two States. Once this bait squid catch is projected for the entire east coast, the level may be substantial. These factors must be considered from a fishery management standpoint. Other aspects of the domestic squid fishery for which there are no data include catch by

private recreational anglers for their own use and the incidental catch of squid in other bottom-trawl fisheries which is discarded at sea as trash.

While the Council may adopt a different management strategy to address the various components of the domestic squid fishery in the future, the Council has determined, based upon the facts and opinions presented to it, that the present level of domestic capacity is reasonable to account for both increases in effort and the unquantified components of the fishery discussed above. As effort levels stabilize, reporting provides a more comprehensive view of the fishery, and angler surveys provide some estimate of the magnitude of the private recreational catch, the Council will be better able to estimate the anticipated domestic harvest for an upcoming fishing year. Until that time, however, the Council believes that the most reasonable approach in light of the uncertainties concerning domestic catch is to set a domestic harvesting capacity which is as realistic as possible, and to use a Reserve to provide for adjustment to DAH if the fishery grow more rapidly than current data indicate. If U.S. fishermen do not harvest their entire quota plus the Reserve, and if biological conditions warrant, then reallocations to TALFF are provided for in Section XIII–3 of this Amendment.

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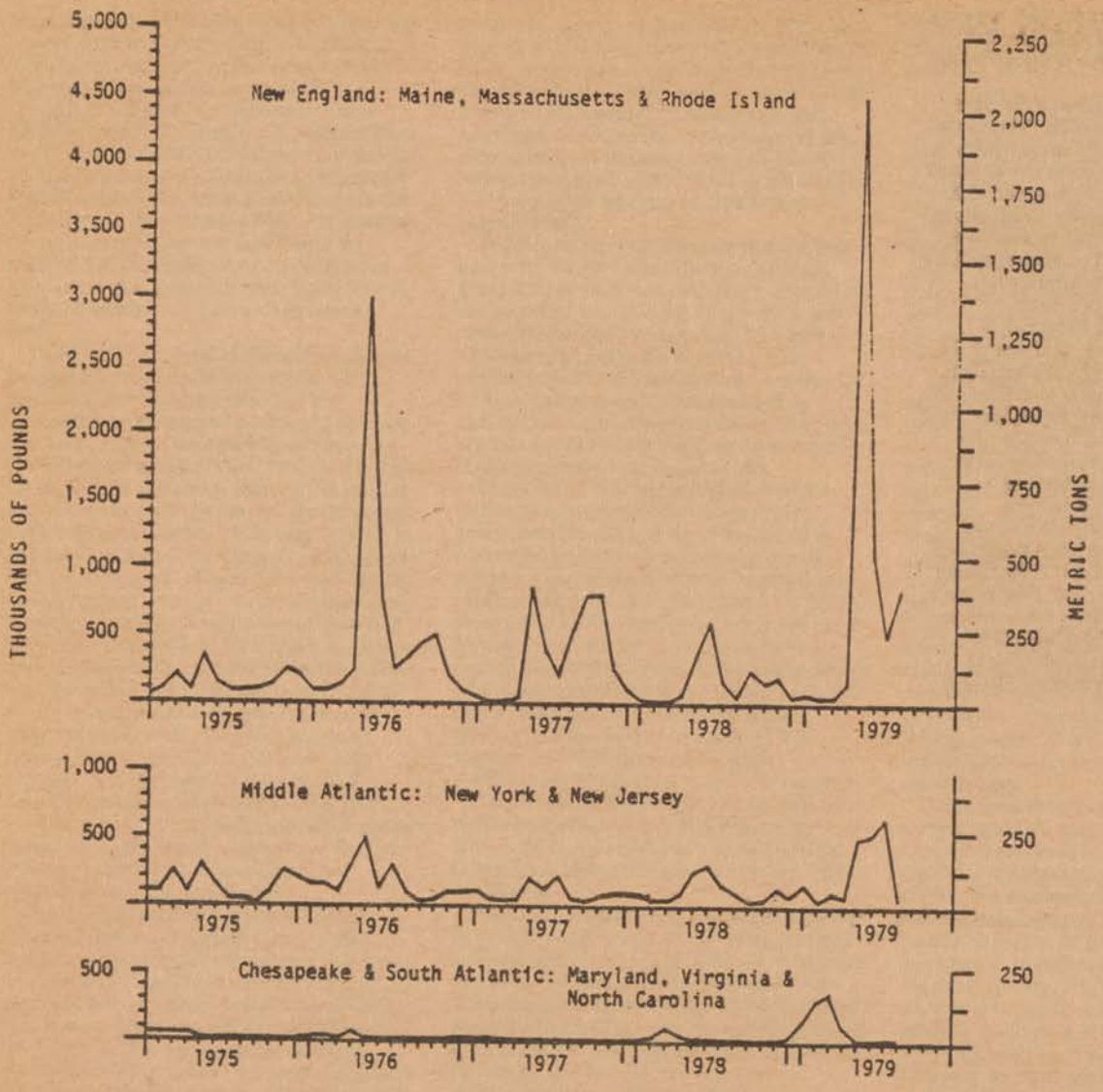

Figure 1. US Squid (Loligo pealei and Illex illecebrosus)
Landings By Region By Month
January, 1975 -- August, 1979

Table 1. US And Foreign Catches Of Loligo In US Waters, 1963 - 1979
(metric tons)

Year	US Landings	US Landings: % of Total	Foreign Landings	Foreign Landings: % of Total	Total Landings
1963	1,249	100	0	0	1,249
1964	572	100	4	0	576
1965	709	88	99	12	808
1966	722	76	226	24	948
1967	1,125	67	553	33	1,678
1968	1,083	31	2,366	69	3,449
1969	898	10	8,205	90	9,103
1970	652	2	35,532	98	36,184
1971	727	4	16,020	96	16,747
1972	742	2	36,047	98	36,789
1973	1,100	3	41,840	97	42,940
1974	2,141	6	32,613	94	34,754
1975	1,621	5	32,181	95	33,802
1976	3,602	14	21,682	86	25,284
1977	1,088	7	15,586	93	16,674
1978[1]	1,476	14	9,356	86	10,832
1979[1,2]	3,583	27	9,784	73	13,367

[1] Preliminary
[2] 1 January - 15 October for Maine - Virginia; 1 January - 30 September for States south of Virginia; 1 January - 20 October for foreign countries

Table 2. US And Foreign Catches Of Illex In US Waters, 1963 - 1978
(metric tons)

Year	US Landings	US Landings: % of Total	Foreign Landings	Foreign Landings: % of Total	Total Landings
1963	810	100	0	0	810
1964	358	100	0	0	358
1965	444	85	78	15	522
1966	452	79	118	21	570
1967	704	71	288	29	992
1968	678	20	2,712	80	3,390
1969	562	40	847	60	1,409
1970	408	58	293	42	701
1971	455	8	4,984	92	5,439
1972	472	4	11,441	96	11,913
1973	530	4	13,166	96	13,696
1974	148	1	20,375	99	10,523
1975	107	1	17,779	99	17,886
1976	229	1	24,707	99	24,936
1977	1,024	4	23,293	96	24,317
1978[1]	385	2	17,310	98	17,695
1979[1,2]	1,231	9	12,544	91	13,785

[1] Preliminary
[2] 1 January - 15 October for Maine - Virginia; 1 January - 30 September for States south of Virginia; 1 January - 20 October for foreign countries

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Table 3.—*Maximum Sustainable Yield, Optimum Yield, Domestic Annual Harvest, Domestic Annual Processing, Reserve, and TALFF*

[metric tons]

Species	MSY	OY	DAH	DAP	Reserve	TALFF
Illex	40,000	30,000	5,000	5,000	13,000	12,000
Loligo	44,000	44,000	7,000	7,000	19,000	18,000

Relationships Between This FMP and The National Standards

Section 301(a) of the Fishery Conservation and Management Act states that: "Any fishery management plan prepared, and any regulation promulgated to implement such plan * * * shall be consistent with the following national standards for fishery conservation and management." The following is a discussion of the standards and how this FMP meets them:

"(1) Conservation and management measures shall prevent overfishing while achieving, on a continuous basis, the optimum yield from each fishery." The best scientific evidence available indicates that neither species of squid is currently overfished nor at a reduced level of abundance. Harvests of both species at the Optimum Yield levels described in this Amendment should not endanger future harvests at comparable levels.

"(2) Conservation and management measures shall be based upon the best scientific information available." This FMP is based on the best and most recent scientific evidence currently available.

"(3) To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination." This FMP meets the requirements of this standard by simultaneously managing *Loligo* and *Illex* in a complementary manner.

"(4) Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges." The OYs and DAH estimated described in this Amendment will accommodate all U.S. demand for squid in the commercial and recreational fisheries without prejudice to residents of any State. The seasonal movements of these species make it extremely unlikely that fishermen of any State or region could harvest the U.S. capacity before the species become available to other domestic fishermen.

"(5) Conservation and management measures shall, where practicable, promote efficiency in the utilization of the fishery resources; except that no such measure shall have economic allocation as its sole purpose." Since domestic fisheries presently harvest both squid species significantly beneath the respective OY levels, no economic inefficiencies due to surplus investment or fishing effort, or similar considerations, should result from the provisions of this Amendment. As U.S. capacity estimates for squid anticipate some redirection to these species of domestic commercial fishing effort from traditional and currently depleted resources, such as groundfish, this Amendment will promote greater overall economic efficiency in domestic commercial fisheries.

"(6) Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches." This Amendment and the OYs and allocations described herein take into account possible fluctuations in species abundance and expected trends in U.S. demand for squid.

"(7) Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication." The management measures outlined in this Amendment are consistent with and complement, but do not duplicate, management measures contained in other FMPs or PMPs. Costs of management should not differ significantly from the costs associated with implementing the original FMP.

XIII. Measures, Requirements, Conditions, or Restrictions Proposed to Attain Management Objectives

Note.—*All references to the Foreign Fishing Regulations are intended to adopt by reference the Foreign Fishing Regulations as they may exist at the time of the adoption of this FMP by the Secretary of Commerce and as they may be amended from time to time following FMP adoption.*

XIII–1. Permits and Fees

No changes are proposed in Amendment #1.

XIII–2. Time and Area Restrictions

Foreign nations fishing for squid shall be subject to the time and area restrictions set forth in part 611.50 of Title 50 Code of Federal Regulations (CFR).

Fixed Gear Avoidance

Foreign nations fishing for squid shall be subject to the fixed gear avoidance regulations set forth in part 611.50(e) of 50 CFR.

XIII–3. Catch Limitations

The fishing year for both species shall be the twelve (12) month period beginning 1 April.

The initial annual Total Allowable Levels of Foreign Fishing are 12,000 mt of *Illex* and 18,000 mt of *Loligo*.

The initial annual quotas for U.S. fishermen are 5,000 mt of *Illex* and 7,000 mt of *Loligo*.

It is the policy of the Mid-Atlantic Fishery Management Council that the Assistant Administrator for Fisheries, NOAA, be allowed to make an in-season adjustment to the estimated Domestic Annual Harvest (DAH) and Total Allowable Level of Foreign Fishing (TALFF) for *Loligo* and *Illex* based on the criteria specified by the Council as set forth below. The Council further establishes that any allocation made by the Assistant Administrator in consultation with the Council must be consistent with the objectives of this FMP. Any in-season adjustment will be made on a species-specific basis due to the differing life cycles of and fisheries for *Loligo* and *Illex*. An adjustment is a temporary in-season increase of DAH and annual domestic quota, a temporary in-season increase of TALFF, and a temporary in-season decrease in Reserve for the affected species. At the end of the fishing year (31 March), DAHs, annual domestic quotas, TALFFs, and Reserves shall revert to the amounts specified by the Mid-Atlantic Fishery Management Council in Section XII–5 of this FMP.

This Council's criteria to guide the Assistant Administrator in the allocation process are as follows:

Allocations From Reserve

The National Marine Fisheries Service (NMFS) shall review reported domestic harvest (including off-loadings at sea) for *Loligo* and *Illex* on a monthly basis. Domestic harvest shall be determined based upon vessel and processor reports required by Section XIV of this FMP and additional port sampling data collected by NMFS.

The Assistant Administrator shall project the total amount of Atlantic squid that will be harvested by US fishermen during the entire fishing year. In making these projections the Assistant Administrator shall consider not only the actual reported domestic harvest, but also the ability and intent of domestic harvestors and processors to harvest and process squid for domestic consumption and export for the remainder of the fishing year. It is the Council's intent that no reallocation shall be made from Reserve to TALFF if domestic harvestors and processors are able and willing to sell squid for export at a reasonable price and acceptable quality but foreign nations are unwilling to purchase such squid in anticipation of receiving additional allocations from the Reserve.

If joint ventures are proposed, the Assistant Administrator shall determine if approval of such proposals will have a negative impact on the US squid processing industry. If the joint ventures will not have a negative impact on the US squid processing industry, the Assistant Administrator shall allocate from the Reserve to DAH the amount of the appropriate squid species as required by such joint ventures.

If the estimated amount of Atlantic squid to be harvested by US fishermen exceeds domestic annual harvest for either or both species, the Assistant Administrator shall allocate a sufficient quantity of the affected species to domestic annual harvest. Such allocation shall ensure that the US fishery for that species of squid will not be subject to closure except in the event that domestic landings of that specis of squid threaten to exceed domestic annual harvest plus the Reserve for that species of squid.

At the end of the first six months of the fishing year, if the estimated total amount of Atlantic squid to be harvested by US fishermen is less tha 80 percent of total of domestic annual harvest plus the Reserve (i.e., 14,400 mt for *Illex* and 20,800 mt for *Loligo*), for either or both species of squid, then the Assistant Administrator shall consider an allocation of part of the Reserve for *Loligo* and/or *Illex* to TALFF.

The Assistant Administrator shall accomplish any allocation of *Loligo* and/or *Illex* through the regulatory process. Notice of proposed rulemaking stating the amount of either or both species to be allocated shall be published in the **Federal Register.** The public shall be given a 15-day comment period from the date of publication. During this time the Assistant Administrator or his designee shall consult with the appropriate committee of the Council to ensure that the proposed allocation is consistent with the objectives contained in the FMP. The Assistant Administrator shall publish final regulations in the **Federal Register** to accomplish any allocation after taking into account as appropriate: (1) The intent and capability of the domestic industry to harvest *Loligo* and/or *Illex* during the latter portion of the fishing year as expressed during the public comment period; (2) the status of the squid populations; and (3) the current harvest of *Loligo* and *Illex* by foreign nationals. The Council believes these final regulations should be published in the **Federal Register** in a timely manner to allow for proper notice. When the final regulations are published in the **Federal Register,** all comments and relevant information received including catch statistics shall be summarized.

The Council has determined that it is inappropriate to provide for allocation of the entire Reserve for both *Loligo* and *Illex* for the following reasons:

(1) Squid harvested by private domestic recreational vessels for use as bait usually goes unreported and thus is not quantifiable.

(2) The uncertainties which presently exist whereby the Council is unable to manage squid throughout the range of the *Illex* stock because of its transboundary nature.

(3) The unknown amount of incidental catch from both squid stocks which goes unreported by vessels using bottom gear.

(4) The possibility of unforeseen entry into the squid fishery by domestic fishermen late in the season.

The Council anticipates that the Assistant Administrator, after consultation with the Council, will implement the intent of the FMP to restrict US harvest in excess of DAH plus the Reserve by imposing such measures including, but not limited to, trip limitations, quarterly or half yearly quotas, and closed areas, as she deems appropriate in the final regulations. Such measures should ensure the achievement of OY in a manner that does not result in a sudden dislocation of those involved in the fishery. The Council intends that these measures will enable fishermen to redirect their effort in a timely manner should be a closure of the fishery or a substantial diminution in allowable catch become necessary.

XIII–4. Types of Gear

Foreign nations fishing for squid shall be subject to the gear restrictions set forth in § 611.50(c) of 50 CFR.

XIII–5. Incidental Catch

Foreign nations fishing for squid shall be subject to the incidental catch regulations set forth in §§ 611.13, 611.14, and 611.50 of 50 CFR.

XIII–6. Restrictions

No operator of any foreign fishing vessel, including those catching squid for use as bait in other directed fisheries, shall conduct a fishery for squid outside the areas designated for such fishing operations in this FMP.

XIII–7. Habitat Preservation, Protection and Restoration

The Council is deeply concerned about the effects of marine pollution on fishery resources in the Mid-Atlantic Region. It is mindful of its responsibility under the Fishery Conservation and Management Act to take into account the impact of pollution on fish. The extremely substantial quantity of pollutants which are being introduced into the Atlantic Ocean poses a threat to the continued existence of a viable fishery. In the opinion of the Council, elimination of this threat at the earliest possible time is determined to be necessary and appropriate for the conservation and management of the fishery, and for the achievement of the other objectives of the Fishery Conservation and Management Act as well. The Council, therefore, urges and directs the Secretary to forthwith proceed to take all necessary measures, including but not limited to, the obtaining of judicial decrees in appropriate courts, to abate, without delay, marine pollution emanating from the following sources: (1) The ocean dumping of raw sewage sludge, dredge spoils, and chemical wastes; (2) the discharge of raw sewage into the Hudson River, the New York Harbor, and other areas of the Mid-Atlantic Region; (3) the discharge of primary treated sewage from ocean outfall lines; (4) overflows from combined sanitary and storm sewer systems; and (5) discharges of harmful wastes of any kind, industrial or domestic, into the Hudson River or surrounding marine and estuarine waters.

XIII–8. Development of Fishery Resources

No changes are required as a result of Amendment No. 1.

XIII–9. Management Costs and Revenues

It is expected that the costs of implementing Amendment No. 1 should be similar to the cost of implementing the original FMP. The licensing and recordkeeping provisions are continued by the Amendment. There will be costs associated with monitoring catch levels for purposes of allocating the Reserve, but these should not differ significantly from the costs of monitoring under the original FMP for purposes of allocating from initial DAH to TALFF. The merger of the Atlantic Squid and Atlantic Butterfish FMPs should reduce governmental costs in the long-run.

XIV. Specifications and Sources of Pertinent Fishery Data

It is recommended that the reporting and recordkeeping requirements of the original FMP continue unchanged.

XV. Relationship of the Recommended Measures to Existing Applicable Laws and Policies

XV–1. Fishery Management Plans

This Amendment No. 1 to the Atlantic Squid FMP is related to other FMPs, PMPs, and proposed FMPs as follows:

1. It will amend the FMP regulating fishing for squid within the FCZ.

2. All fisheries of the northwest Atlantic are part of the same general geophysical, biological, social, and economic setting. Domestic and foreign fishing fleets, fishermen, and gear often are active in more than a single fishery. Thus, regulations implemented to govern harvesting of one species or a group of related species may impact upon other fisheries by causing transfers of fishing effort.

3. Many fisheries of the northwest Atlantic result in significant non-target species fishing mortality. Therefore, each management plan must consider the impact of non-target species fishing mortality on other stocks and as a result of other fisheries.

4. Squid are a food item for many commercially and recreationally important fish species. Also, squid utilize young hake, mackerel, and herring, and possibly many other finfish species, as food items.

5. Present ongoing research programs often provide data on stock size, levels of recruitment, distribution, age, and growth for many species regulated by the PMPs, FMPs, and proposed FMPs.

XV–2. Treaties or International Agreements

No treaties or international agreements, other than GIFAs entered into pursuant to the FCMA, relate to this fishery.

XV–3. Federal Laws and Policies

The only Federal law that controls the fisheries covered by this management plan is the FCMA.

Marine Sanctuary and Other Special Management Systems

The USS Monitor Marine Sanctuary was officially established on January 30, 1975, under the Marine Protection, Research, and Sanctuaries Act of 1972. Rules and regulations have been issued for the Sanctuary (15 CFR Part 924). They prohibit deploying any equipment in the Sanctuary, fishing activities which involve "anchoring in any manner, stopping , remaining, or drifting without power at any time" (924.3(a)), and "trawling" (924.3(h)). Although the Sanctuary's position off the coast of North Carolina at 35°00'23" N latitude—75°24'32" W longitude is located in the plan's designated management area, it does not occur within, or in the vicinity of, any foreign fishing area. Therefore, there is no threat to the Sanctuary by allowing foreign squid fishing operations under this plan. Also, the Monitor Marine Sanctuary is clearly designated on all National Ocean Survey (NOS) charts by the caption "protected area." This minimizes the potential for damage to the Sanctuary by domestic fishing operations.

Current and/or Proposed Oil, Gas, Mineral, and Deep Water Port Development

While Outer Continental Shelf (OCS) development plans may involve areas overlapping those contemplated for offshore fishery management, we are unable to specify the relationship of both programs without site specific development information. Certainly, the potential for conflict exists if communication between interests is not maintained or appreciation of each other's efforts is lacking. Potential conflicts include, from a fishery management position: (1) Exclusion areas, (2) adverse impacts to sensitive, biologically important areas, (3) oil contamination, (4) substrate hazards to conventional fishing gear, and (5) competition for crews and harbor space. The Council has recommended that the nomination for the Georges Bank Sanctuary be reinstated and that an EIS be prepared for it.

We are not aware of pending deep water port plans which would directly impact offshore fishery management goals in the areas under consideration, nor are we aware of potential effects of offshore fishery management plans upon future development of deep water port facilities.

Potential Impact on Marine Mammals and Endangered Species

Numerous species of marine mammals occur in the northwest Atlantic Ocean, yet definitive species composition is unknown. Indications are that the most numerous species in the area are the common (saddleback) dolphin (*Delphinus delphis*), harbor porpoise (*Phocoena phocoena*), and harbor seal (*Phoca vitulina*). Data on population abundance for various species, however, is sketchy at best, and for some species is non-existent. In addition, feeding behavior and preference for certain prey species are not well understood. These facts in combination make it extremely difficult to assess, even qualitatively, the potential impact of the squid management program on marine mammal populations.

The harvest levels proposed in Amendment No. 1 are not expected to cause any declines in abundance of these species. Therefore, no change in the availability of these species to those toothed cetaceans and pinnipeds that utilize squid as a food item is expected to occur. The *Illex* OY has been reduced from MSY to in part allow for the fact that *Illex* is a prey species for may species, including pilot whales.

Whenever fishing gear and marine mammals occur in the same area, there always exists a potential for an incidental kill of marine mammals. Except in unique situations (e.g., tuna-porpoise in the central Pacific), the incidental kill as a result of commercial fishing activities usually has an insignificant impact upon the stability of marine mammal populations. This is because the number of animals killed is relatively small compared to total population size.

Outside of certain marine mammals, the only threatened/endangered species occurring in the northwest Atlantic are the shortnose sturgeon (*Acipenser brevirostrum*) and several species of sea turtles. Because data on occurrences of shortnose sturgeon are vital to understanding its current status, the Council urges fishermen to report any incidental catch of this species to the Shortnose Sturgeon Recovery Project of the NMFS.

Available data appear to indicate that several species of sea turtles are regularly found in New England waters. These turtles are the Kemp's ridley (*Lepidochelys kempi*), leatherback (*Dermochelys coriacea*), loggerhead (*Caretta caretta*), and green (*Chelonia mydas*). In addition, hawksbill turtles (*Eretmochelys imbricata*) occasionally stray into the area. The Kemp's ridley sea turtle, while probably the most endangered reptile on earth (total population estimated at several thousand adult individials), is also the most frequently observed sea turtle in New England waters, especially Cape Cod Bay. Strandings of Kemp's ridley are routine, have been known to occur for some time, and result in some mortality to the stranded animals. One hypothesis is that individuals remain in the Bay until late autumn, and with the decrease in water temperature as winter approaches, these animals become subject to hypothermia and subsequently die.

In late autumn, 1978, seven Kemp's ridley turtles were found on the beaches along Cape Cod Bay. While several of these individuals were reportedly cut and bleeding when first observed, recent examination of the preserved specimens did not reveal any major physical damage to the individuals. It is possible that these animals were injured by fishing activity either through entanglement in the trawl nets or by contact with a vessel's propeller. However, there is no solid evidence to indicate that fishing operations were responsible for the kills. Based on inquiries to fishermen conducted by NMFS and Massachusetts Division of Marine Fisheries personnel, the general conclusion can be drawn that regular and numerous killings of Kemp's ridley turtles in Cape Cod Bay do not occur as a result of normal commercial fishing operations. Additional monitoring of turtles is needed.

In conclusion, the Council does not believe that continuation of the Squid FMP will have any adverse impact upon populations of marine mammals and endangered species. As additional understanding of the status and dynamics of marine mammal and sea turtle populations becomes available, the Council will integrate this information in examining potential impacts upon the environment as a result of FMPs.

XV–4. State, Local, and Other Applicable Laws and Policies

No State or local laws control the fisheries that are subject of this management plan.

State Coastal Zone Management (CZM) Programs

The proposed action entails management of squid stocks in an effort to ensure sustained productivity at some optimum level. In order to achieve this goal, all management plans must incorporate means to achieve integrity of fish stocks, related food chains, and habitat necessary for this integrated biological system to function effectively. Inasmuch as CZM plans are presently in the developmental stages, we are not aware of specific measures on the part of the individual states which would ultimately impact this fishery plan. However, the CZM Act of 1972, as amended, is primarily protective in nature, and provides measures for ensuring stability of productive fishery habitat within the coastal zone. Therefore, each State's CZM plan will probably assimilate the ecological principles upon which this particular fishery management plan is based. It is recognized that responsible long-range management of both coastal zones and fish stocks must involve mutually supportive goals. At the time that the draft of Amendment No. 1 was distributed for review, the Council had been advised that Maine, Massachusetts, Rhode Island, New Jersey, Maryland, and North Carolina have approved CZM programs. Copies of the draft were sent to the CZM agencies in those States for review and no comments were received.

XVI. Council Review and Monitoring of the Plan

The Council will review the plan each year. The review will include the most recent cruise survey data and data on the US harvesting and processing industries. This will permit a review of MSY, OY, US Capacity, and TALFF and the development of any required modifications to the FMP. These reviews will be carried out so that any amendments to the FMP can be reviewed by the Council and the public and be implemented by the Secretary of Commerce by April 1 of each year. This schedule may be modified in the future as the fishery evolves.

XVII. References

All requests for background information, biological assessments, etc., should be directed to the offices of the Mid-Atlantic Fishery Management Council. Additions to the references listed in the original FMP are:

Mid-Atlantic Fishery Management Council. 1978. Atlantic Squid Fishery Management Plan.

Lange, Anne M. T., Squid (*Loligo pealei* and *Illex illecebrosus*) stock status update: July, 1979. NMFS, Northeast Fisheries Center, Woods Hole Laboratory. Lab. Reference No. 79–30.

Appendix I—Squid (Loligo Pealei and Illex Illecebrosus) Stock Status Update: July 1979 [1]

Introduction

This document presents recent information regarding the squid stocks *Loligo pealei* and *Illex illecebrosus* from the Gulf of Maine to the Middle Atlantic area (ICNAF areas 5 + 6, Figure 1). It is an update of the squid stock status report of June 1978 (Lange, NEFC, Lab. Ref. No. 78–36) [2] and provides 1978 USA and foreign commercial catches and length frequency samples by month and USA monthly catch per effort indices; current 1979 USA and foreign commercial catches; 1978 spring, summer, and autumn USA research bottom trawl survey results, including autumn abundance and pre-recruit indices; and 1979 USA spring survey results.

Results and Discussion

Commercial Fishery

Provisional USA squid catches totaled 1,861 mt (Table 1) in 1978, compared with 2,553 mt reported in 1977. This total consisted of 1,476 mt of *Loligo* and 385 mt of *Illex*. *Illex* catches decreased 67% from the 1977 level while *Loligo* catches increased about 8%. Though some squid were caught in every month, the greatest USA catches occurred in May and June, while *Loligo* were inshore to spawn and *Illex* were in shallow waters to feed. Through April 1979, preliminary USA squid catches totaled 258 mt of *Loligo* and 20 mt of *Illex*.

US catch per effort of each squid species, based on vessel trips where 50% or more of the catch was *Loligo* or *Illex*, is presented in Table 2. In 1978, overall catch per effort, especially in the southern New England area, decreased for all vessel types from the 1976 and 1977 values.

Preliminary 1978 squid catches for other countries totaled 26,666 mt: 9,356 mt of *Loligo* and 17,310 of *Illex*. This represents a 43% decline in *Loligo* and a 27% decline in *Illex* catches when compared to 1977 values (1977 total—41,237 mt). These preliminary estimates show only 42.1% of the foreign allocation for *Loligo* and 54.6% of the *Illex* quota were taken in 1978. Even when considering only the catches and allocations of those countries with a directed squid fishery (Italy, Japan, Mexico, and Spain), only 45.8% and 76.5% of the *Loligo* and *Illex* quotas, respectively, were caught. It should be noted, however, that Japanese and Italian catches may have been restricted by limits on by catch (97% and 71%, respectively, of their butterfish allocations were taken).

Preliminary catches in the foreign fishery through June 1979, however, totaled 9,707 mt of *Loligo* (53% of the TALFF) and 3,804 mt of *Illex* (20% of the TALFF). This is about twice the catch of *Loligo* and about the same catch of *Illex* for the same time period in 1978. Based on vessel activities information reported to the NMFS for January and February 1979, there was also a 64.7% increase in the number of vessel-days on the fishing grounds for the directed squid fishery compared with January and February 1978. Therefore, overall catch per effort (mt per vessel days on grounds) increased about 1.5 times the January-February 1978 value.

Length frequency samples for *Loligo* from the US commercial fishery are summarized in Table 3. Length frequencies from the foreign squid fisheries, obtained by US observers throughout the fishing year, are presented in Tables 4a or 4b for *Loligo* and *Illex*, respectively. The mean lenghts for *Loligo* from the inshore US fishery, directed primarily at mature spawning individuals, are generally larger than those from the offshore fishery, which is focused on this species prior to inshore spawning individuals. Mean length of *Illex* from the offshore fishery increased through the year (January through December) from 15.1 to 23.7 cm.

Research Vessel Surveys

Results of US bottom trawl surveys, conducted during the springs of 1977 and 1978, indicated great reductions in catch per tow of *Loligo* (Table 5) when compared with previous years since 1968. Stratified mean catches per tow of *Illex* were also well below the 10 year average in all but the southern New England area. However, great variability in spring *Illex* catches may reflect changes in availability to the survey rather than fluctuations in total population size, since this species ranges to depths beyond the scope of the survey during that time of year.

Decreased catch per tow in the 1978 US autumn bottom trawl survey indicated a great decline in *Loligo* abundance (Lange and Sissenwine, 1979). [1] Overall abundance, as indicated by stratified mean number per tow, of all sizes from the Middle Atlantic through Georges Bank strata (Figure 1) decreased from a 7 year (1971–1977) average of 353.2 to 144.2 in autumn 1978 (Table 6.). This was due primarily to a great drop in the pre-recruit index (mean number per tow of individuals less than 9 cm) from a 7 year average of 314.4 to 93.4. This represented a decrease in the pre-recruit portion of the population from an average of 89% to 65%, while the index for recruited individuals was above average. Stratified mean number of *Illex* per tow (Table 6) increase from 1977 to 1978 to a level comparable to that of 1976, when high abundance of this species was observed. However, the mean weight per tow was about 39% less than the 1976 level, indicating smaller individuals. In fact, the proportion of those taken which were of pre-recruited size in 1978 was the second highest in the time series, indicating the possibility of a good age group entering the fishery in 1979.

Stock size estimates, based on stratified mean number per tow from the autumn survey, are presented in Tables 7 and 8 for *Loligo* and *Illex*, respectively. The estimated population size for *Loligo* (1.251×10^6) is the lowest since 1971, while that for *Illex* is the second highest since 1968, the first year that estimates were available for these species.

Preliminary analysis of spring 1979 USA survey results indicate a significant increase in the mean catch (in kilograms) per tow of *Loligo* (Table 5) when compared to the spring 1977–1978 mean (2.72 vs. 1.49). Though this is below the high 1975–1976 levels, it is comparable to other years in the time series. There was also a decrease in the mean length of *Loligo* in the 1979 spring survey compared with all other years from about 15 to about 6 cm. This may indicate the presense of a late (autumn 1978) spawned brood which is not available at the time of the autumn survey. Catches of *Illex* during the spring survey were comparable to the 1968–1978 average.

Conclusions

The continued downward trend in *Loligo* abundance in 1978 from recent (1973–1976) levels was evidenced in both commercial fishery and US bottom trawl survey data. The directed foreign fishery only caught 46% of its 1978 allocation, while US inshore catches and catch per effort were well below the 1976 and 1977 values. Research vessel survey results indicated a possible 59% drop in the abundance of *Loligo* in autumn 1978 (even through there were more recruited (greater than 8 cm) individuals than the 7 year average). This was primarily the result of a 70% decline in pre-recruit sized individuals which would be contributing to the fishery through next autumn. Catches thus far in 1979 are above those for the same time period in 1978, but estimates of effort applied to obtain this catch were also greater than in 1978. The USA spring 1979 survey results indicate a level of *Loligo* biomass comparable to the long-term average, with mean lengths smaller than normally found at that time of year. The high number of small squid appear to be from the brood which would normally have appeared in the autumn survey and will probably contribute to the fishery for the remainder of this year. Late appearance of these individuals may account for the

[1] Lange, Anne M.T., MNFS, Northeast Fishery Center, Woods Hole Lab., Laboratory Ref. No. 79–30, July 23, 1979

[2] Lange, A.M.T. MS, 1978. Squid (*Loligo pealei* and *Illex illecebrosus)* stock status: June, 1978. NMFS, NEFC. Lab. Ref. No. 78–36.

[1] Lange, A.M.T. and M.P. Sissenwine. 1979. Decreased Abundance of Long-finned Squid off the Northeastern United States. Coastal Oceanog. and Climat. News. Vol 1.1 (2):18.

apparent decrease in abundance noted in autumn 1978.

The autumn 1978 *Illex* survey abundance index was again well above historic levels and comparable to the 1976 "record" level. There was also a great increase in prerecruit sized individuals, second only to the 1975 level which preceded the great abundance in 1976. If a relationship exists between this index and availablilty to the fishery, *Illex* may be very abundant in 1979. In fact, catches of *Illex* thus far in 1979 are running above the historical average. While *Illex* ranges into Canadian waters, the relationships between the stocks in these two areas is as yet unknown. Catches off Canada in 1978 totaled 98,600 mt, less than the allowable level of 100,000 mt but a 23% increase over the 1977 level and more than twice the 1976 catch.

Table 1.—*USA 1978 Monthly Squid Landings*[1] in Metric Tons by Area

	5Y	5Ze	5Zw	6	Total
Loligo					
January			9.2	76.5	85.7
February			2.2	59.7	61.9
March		1.3	1.9	80.5	83.7
April		0.2	34.5	98.6	133.3
May		2.1	157.4	118.8	278.3
June		0.4	81.5	177.4	259.3
July		0.1	19.9	98.8	118.8
August			10.3	44.6	54.9
September	1.0		28.9	11.2	41.1
October	4.5	2.7	64.6	26.7	98.5
November	5.8	0.9	80.5	81.2	168.4
December	1.2	0.5	25.1	64.2	91.0
Total	13.5	8.2	516.0	938.2	1,475.9
Illex					
January				3.2	3.2
February				6.6	6.6
March					
April					
May			0.1		0.1
June	3.5	0.5	189.9		193.9
July	16.0	29.4	0.1		45.5
August	6.5	7.5	1.2		15.2
September	6.8	93.5			100.3
October	7.4	2.1	0.4		9.9
November	9.7	0.4			10.1
December	0.3				0.3
Total	50.2	133.4	191.7	9.8	385.1

[1] Preliminary landings, non-specified squid catches prorated to species by month and area.

BILLING Code 3510-22-M

Table 2

Monthly And Annual Catch Per Effort (Metric Tons Per Days Fished) In The US Directed[1] Squid Fisheries, By Area And Vessel Size[2], 1976-1978, Including Total Annual Number Of Days Fished

AREA	VESSEL SIZE	YEAR	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL	TOTAL DAYS
							ILLEX									
Gulf Of Maine	Small	1976								4.55	6.66	13.61	5.63		9.30	10.0
		1977							1.76	0.78	1.81	7.43	9.85		3.85	4.5
		1978							0.68						0.68	0.3
	Medium	1977								2.83	7.62	15.31	11.83		7.77	3.5
So. New England	Small	1977							2.59						4.06	2.3
	Medium	1976							6.39						6.39	1.2
							LOLIGO									
Georges Bank	Small	1978					1.59								1.59	0.8
	Medium	1977					1.51		4.27						2.50	7.0
So. New England	Small	1976					6.66	7.33		3.44	0.76				6.62	41.6
		1977					5.31	3.53		0.59	1.24	1.24	0.23	6.89	4.57	35.0
		1978					2.59	1.67	2.36	1.07		1.13	1.56		2.21	52.5
	Medium	1976				1.56	7.79	5.34							6.41	58.8
		1977				1.00	6.33	2.49	4.57			0.50	4.66		4.57	55.7
		1978					2.71	1.19			1.39	1.89		1.59	1.61	15.1
Mid-Atlantic	Small	1976			1.84	14.97			1.33		2.10				3.38	2.4
		1978								1.40					1.40	0.3
	Medium	1976			1.41	1.48									1.47	4.0
		1978										2.89	0.89		1.11	1.8

(1) Individual trips with Loligo or Illex composing 50% or more of the total catch

(2) Small vessels = 0.0 - 49.9 gross registered tons Medium vessels = 50.0 - 149.9 gross registered tons

Table 3. 1978 US Commercial Loligo Length Frequencies[1], From The Southern New England Area, By ICNAF Subdivision, And Month

	5Zw						6A
Length (cm)	APR	MAY	JUN	JUL	SEP	OCT	MAY
1	-	-	-	-	-	-	-
2	-	-	-	-	-	-	-
3	-	-	-	-	-	-	-
4	-	-	-	-	-	-	-
5	-	-	3	-	-	-	-
6	-	-	12	-	-	-	-
7	-	-	6	10	-	30	-
8	-	-	12	30	-	60	-
9	10	-	33	30	-	120	-
10	20	-	12	40	-	260	-
11	25	-	24	120	-	230	-
12	45	-	93	150	10	120	-
13	40	-	102	100	30	80	13
14	40	10	108	100	60	60	-
15	95	10	81	100	80	30	13
16	65	59	75	50	150	10	-
17	104	49	78	50	150	-	38
18	104	59	69	50	150	-	38
19	65	147	72	50	40	-	64
20	119	137	48	10	40	-	115
21	40	98	21	40	-	-	64
22	45	78	33	20	10	-	77
23	65	88	21	10	10	-	77
24	30	29	18	10	30	-	38
25	25	49	33	20	20	-	38
26	10	20	15	-	90	-	90
27	25	20	6	10	10	-	51
28	-	29	12	-	40	-	77
29	10	39	3	-	70	-	64
30	5	39	3	-	-	-	26
31	5	29	9	-	10	-	13
32	-	10	-	-	-	-	38
33	-	-	-	-	-	-	26
34	-	-	-	-	-	-	-
35	5	-	-	-	-	-	-
36	5	-	-	-	-	-	13
37	-	-	-	-	-	-	-
38	-	-	-	-	-	-	13
39	-	-	-	-	-	-	13
40	-	-	-	-	-	-	-
Total	1000	1000	1000	1000	1000	1000	1000
No. Fish Measured	201	102	334	100	100	100	78
Landed Weight (mt)	26.4	155.4	81.5	19.6	20.8	60.9	9.3
Est. No. Landed ($x10^3$)	188.3	800.1	726.6	244.9	138.1	1205.9	37.3
Mean Length (cm)	18.4	21.8	16.4	14.5	19.5	10.8	24.4
Mean Weight (g)	141	195	113	82	150	50	250

(1) Length frequencies, per mille, expanded over the entire US Loligo catch in the area and month

Table 4a. 1978 Loligo Length Frequencies[1] (Per Mille) From The Foreign Squid Fishery

Length (cm)	MONTH JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1	-	-	-	-					-	-	-	-
2	-	-	-	-					-	-	-	-
3	-	-	0.4	-					-	-	-	-
4	1.2	0.5	2.8	6.9					93.3	-	0.7	-
5	7.1	4.2	10.5	18.1					-	-	5.8	6.6
6	19.0	13.5	21.6	26.2					186.7	0.9	11.0	47.4
7	39.9	41.1	35.6	31.9					124.5	5.2	19.7	28.8
8	64.4	69.0	58.7	34.8					31.1	28.3	48.1	51.6
9	102.6	102.7	49.8	28.1					14.3	60.4	103.5	97.2
10	119.3	138.1	72.1	33.6					220.0	110.7	149.0	124.8
11	108.2	138.6	83.1	40.2					241.6	154.0	160.5	203.9
12	94.7	127.3	94.2	34.9					20.5	154.6	143.9	137.5
13	79.3	99.0	86.8	85.4					28.8	155.5	90.7	84.3
14	59.2	87.0	88.3	93.8					39.0	101.1	61.5	55.6
15	48.6	59.2	103.3	164.5					-	61.0	55.0	45.7
16	43.7	36.3	82.7	103.3					-	52.9	40.9	22.2
17	40.6	26.7	65.9	75.6					-	37.7	39.9	32.7
18	30.2	16.5	38.1	66.1					-	26.6	22.6	25.8
19	25.6	12.7	33.6	32.2					-	18.3	14.7	7.8
20	22.7	10.8	29.1	67.6					-	13.6	11.5	7.6
21	19.0	6.4	15.1	12.5					-	6.4	10.5	7.4
22	17.1	2.5	8.7	11.9					-	5.0	4.9	2.8
23	9.4	2.1	10.3	14.1					-	1.6	2.7	2.8
24	9.6	2.4	3.6	7.3					-	3.5	1.1	2.0
25	6.8	0.9	1.7	4.4					-	1.1	0.4	0.7
26	6.0	0.6	0.5	-					-	0.2	0.1	2.0
27	3.5	0.4	1.3	6.8					-	0.8	1.3	0.4
28	4.5	0.5	0.7	-					-	-	-	1.6
29	4.6	0.4	0.3	-					-	-	-	0.3
30	4.6	-	0.6	-					-	0.6	-	0.2
31	3.2	0.1	-	-					-	-	-	-
32	1.1	0.2	0.2	-					-	-	-	-
33	2.1	-	0.5	-					-	-	-	-
34	1.0	0.1	-	-					-	-	-	-
35	0.4	-	-	-					-	-	-	-
36	0.3	0.2	-	-					-	-	-	-
37	0.1	-	-	-					-	-	-	-
38	0.1	-	-	-					-	-	-	-
39	0.1	-	-	-					-	-	-	-
40	0.2	-	-	-					-	-	-	-
Total Number	1000	1000	1000	1000					1000	1000	1000	1000
Total Number in Catch[2]	807.2	366.7	362.6	20.7					11.0	198.4	180.5	58.4
Total Weight in Catch[3]	97.6	21.2	27.3	1.9					0.4	13.2	10.8	3.3
Mean Length (cm)	13.18	11.87	13.38	14.52					8.77	12.84	12.20	11.66

(1) From samples taken by US observers, expanded over the total sampled catch, and summed over all countries and vessels
(2) Estimated total number in sampled catch, all countries and vessels, in thousands of squid
(3) Total weight of catches which were sampled, in metric tons

Table 4b. 1978 *Illex* Length Frequencies[1] (Per Mille) From US Observer Samples During The Foreign Squid Fishery

Length (cm)	MONTH											
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1	-	-	-	-		-	-	-	-	-	-	-
2	-	-	-	-		-	-	-	-	-	-	-
3	-	-	-	-		-	-	-	-	-	-	-
4	-	-	-	-		-	0.90	-	-	-	-	-
5	-	-	-	-		-	1.80	-	-	-	-	-
6	-	-	-	-		-	-	0.2	-	-	-	-
7	-	-	-	-		-	0.9	0.2	-	-	-	-
8	0.5	-	-	-		-	2.7	2.5	-	-	0.1	-
9	0.5	-	-	-		-	-	12.4	-	-	9.7	-
10	57.4	35.0	-	10.1		-	1.8	23.1	16.8	0.9	0.1	-
11	71.6	35.0	-	31.9		0.12	1.0	12.2	14.5	0.1	-	0.1
12	75.0	259.2	117.2	124.2		0.4	0.4	5.0	42.7	-	-	-
13	97.9	194.4	25.5	208.1		1.00	3.4	1.7	114.2	-	-	0.4
14	188.4	229.4	165.9	251.7		4.3	2.3	1.3	120.8	-	-	0.1
15	99.5	190.9	162.2	182.9		16.8	13.0	1.9	38.0	1.6	0.4	1.2
16	67.8	-	223.6	117.5		75.4	30.0	4.2	44.9	4.0	-	0.1
17	88.7	56.0	176.8	58.7		229.3	84.0	10.0	20.5	7.0	0.4	0.3
18	117.2	-	67.5	25.2		314.1	206.6	58.5	16.9	7.2	1.4	0.1
19	63.5	-	61.3	-		167.7	281.9	188.1	40.6	21.5	11.8	4.0
20	27.4	-	-	-		81.1	193.4	280.1	121.2	105.0	33.9	12.7
21	16.4	-	-	-		65.8	92.0	177.1	152.1	231.1	116.0	105.2
22	14.2	-	-	-		24.4	40.0	94.8	113.2	271.0	186.6	106.8
23	8.8	-	-	-		16.1	20.8	47.3	87.0	151.0	203.6	237.7
24	6.2	-	-	-		2.3	14.0	31.9	33.4	77.0	157.5	235.2
25	-	-	-	-		1.1	6.0	26.1	15.2	63.6	128.4	139.0
26	-	-	-	-		-	3.1	13.2	6.9	36.4	73.1	78.2
27	-	-	-	-		-	0.8	5.0	1.0	18.2	51.7	47.8
28	-	-	-	-		-	0.1	1.9	-	4.3	18.4	21.1
29	-	-	-	-		-	-	0.5	-	0.2	2.6	8.9
30	-	-	-	-		-	-	0.5	-	-	3.0	-
31	-	-	-	-		-	-	0.1	-	-	1.1	1.1
32	-	-	-	-		-	-	-	-	-	0.3	-
Total Number	1000	1000	1000	1000		1000	1000	1000	1000	1000	1000	1000
Total Number In Catch[2]	126.2	0.6	12.4	0.6		1075.2	1294.5	1384.5	251.2	393.0	160.5	170.6
Total Weight In Catch[3]	10.78	0.03	1.06	0.04		142.60	194.05	244.27	36.26	87.71	41.25	45.75
Mean Length (cm)	15.12	13.40	15.46	14.10		18.27	19.06	19.97	18.23	22.14	23.26	23.72

(1) Expanded over total catch which was sampled and summed over all countries and vessels
(2) Estimated total number in sampled catch, all countries and vessels, in thousands of squid
(3) Total weight of catches which were sampled, in metric tons

Table 5. Loligo Stratified Mean Weight (kilograms) per tow from USA Spring Bottom Trawl Surveys (1968-1979).

	Area Strata		
Year	Mid-Atlantic (61-76)	Southern New England (1-12)	Southern Georges Bank (13-15)
1968	2.5	1.2	1.1
1969	1.7	0.3	5.3
1970	1.5	1.1	0.7
1971	2.8	1.4	1.8
1972	3.6	5.9	2.8
1973	2.8	4.9	3.4
1974	2.8	1.0	0.1
1975	4.9	7.6	2.0
1976	7.2	7.6	0.9
1977	1.0	1.2	0.6
1978	2.4	1.8	0.4
1979	1.7	3.4	4.8

Table 6. Total Abundance and Pre-Recruit Indices of Squid. (Stratified mean number per tow of Loligo and Illex of all sizes and of Loligo <8-cm and Illex <10-cm mantle length in autumn bottom trawl survey, Middle Atlantic to Georges Bank.)

	Loligo (#/tow)		Illex (#/tow)	
Year	All Sizes	<8 cm	All Sizes	<10 cm
1967	134.5	126.9	2.1	0.7
1968	176.5	159.9	2.3	0.6
1969	237.3	217.4	0.8	0.3
1970	85.6	79.3	3.4	0.2
1971	163.3	161.5	1.9	0.6
1972	271.4	258.5	3.5	1.8
1973	372.0	353.9	1.3	0.3
1974	251.7	233.3	3.0	2.1
1975	614.4	593.3	12.4	9.6
1976	410.9	302.5	28.7	0.6
1977	388.5	297.7	15.8	1.1
1978	144.2	93.4	28.4	5.1

Table 7. Loligo biomass estimates (mean weights in kg and numbers per tow by strata set).

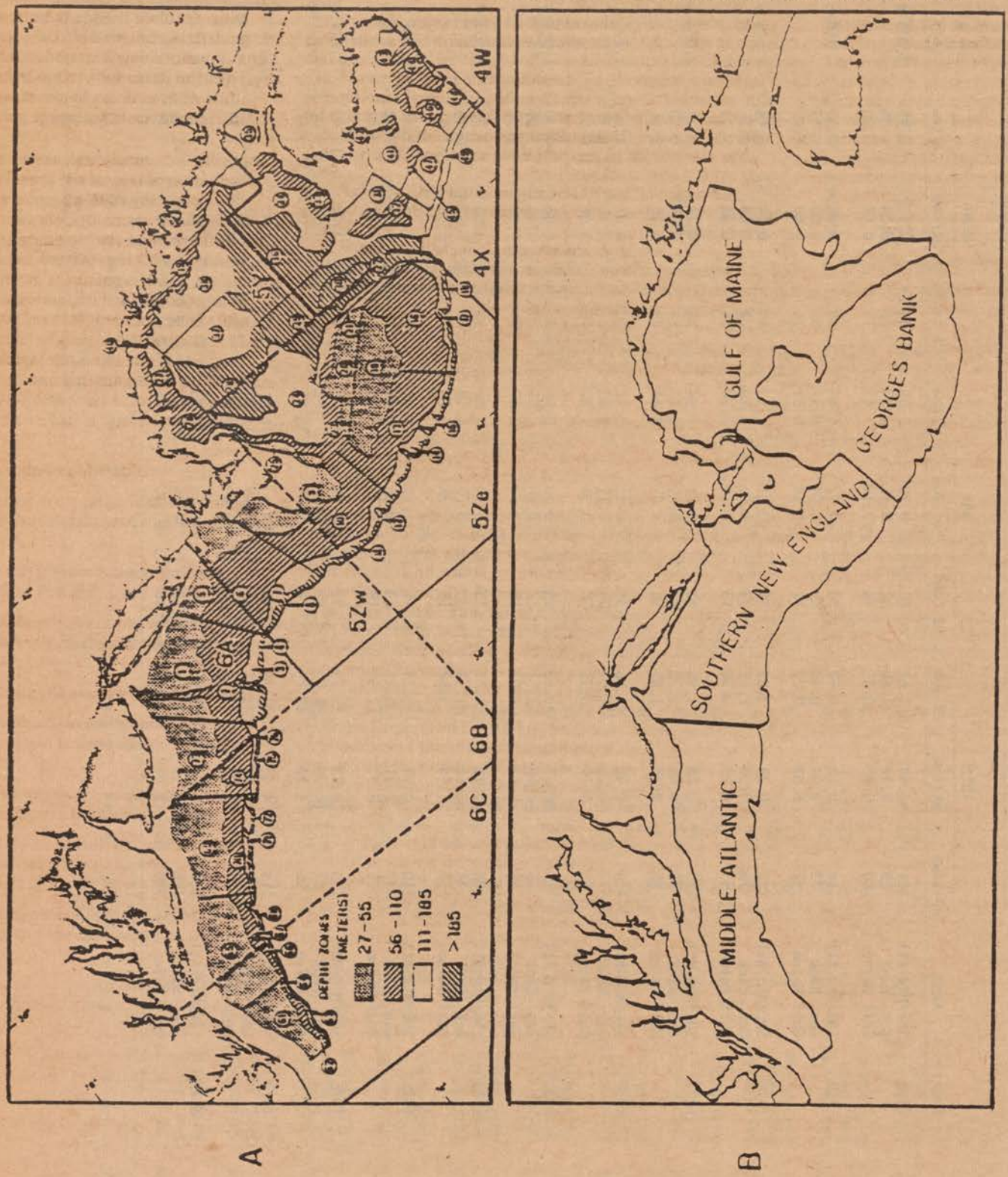
Year	Area	Total			Day			Night			B_1 Wt MT	B_1 # $\times 10^6$	B_2 Wt MT	B_2 # $\times 10^6$
		# tows	Wt/tow	#/tow	# tows	Wt/tow	#/tow	# tows	Wt/tow	# tow				
1968	SNE/Mid-Atl	124	10.86	267.57	40	16.23	362.60	43	2.51	30.58	28,073	692.6	29,114	1,211.9
	Geo. Bank	69	0.40	10.73	22	0.77	17.13	25	0.02	0.12				
	Gulf Maine	50	0.01	0.09	18	0.01	0.10	15	0.00	0.11				
1969	SNE/Mid-Atl	119	13.99	347.50	38	27.32	777.30	39	3.29	51.29	37,643	931.6	48,053	2,393.1
	Geo. Bank	73	1.56	36.70	25	2.49	60.37	32	0.54	9.70				
	Gulf Maine	51	0.03	0.40	17	0.06	0.90	16	0.00	0.00				
1970	SNE/Mid-Atl	122	4.13	105.40	38	5.55	168.10	40	2.98	63.70	12,095	337.9	19,640	1,946.2
	Geo. Bank	70	1.12	49.40	23	2.99	133.73	24	0.22	6.40				
	Gulf Maine	53	0.05	1.46	18	0:06	1.55	16	0.00	0.00				
1971	SNE/Mid-Atl	125	4.04	234.20	43	8.55	515.70	41	0.27	11.29	11,752	641.4	14,050	1,106.1
	Geo. Bank	73	1.06	34.10	27	1.51	63.75	24	0.51	9.69				
	Gulf Maine	55	0.03	0.57	16	0.08	1.08	20	0.01	0.42				
1972	SNE/Mid-Atl	114	9.41	398.90	31	13.14	524.10	40	1.24	31.25	25,400	1,065.1	21,039	1,533.3
	Geo. Bank	73	1.13	39.30	29	1.70	68.71	21	0.28	5.08				
	Gulf Maine	55	0.00	0.20	18	0.00	0.00	18	0.00	0.02				
1973	SNE/Mid-Atl	111	14.20	542.90	38	17.47	817.10	35	3.68	66.94	42,338	1,460.9	44,252	3,092.0
	Geo. Bank	73	4.53	60.90	27	7.16	96.15	28	2.31	30.44				
	Gulf Maine	54	0.05	0.91	16	0.08	1.56	21	0.02	0.48				
1974	SNE/Mid-Atl	108	11.41	355.90	33	16.33	886.10	38	5.38	130.00	32,014	989.0	46,442	4,757.0
	Geo. Bank	74	2.21	62.07	20	2.67	96.20	26	2.93	22.10				
	Gulf Maine	57	0.03	0.78	19	0.03	0.63	21	0.03	0.23				
1975	SNE/Mid-Atl	115	15.55	895.50	41	20.27	1,548.40	36	6.11	115.20	41,912	2,412.0	48,636	7,789.0
	Geo. Bank	73	1.80	102.56	23	1.64	142.70	25	0.47	1.82				
	Gulf Maine	65	0.81	0.81	19	0.03	1.56	23	0.02	0.40				
1976	SNE/Mid-Atl	123	15.79	579.79	37	22.05	979.90	40	3.65	90.74	44,935	1,632.0	51,436	4,372.0
	Geo. Bank	67	3.14	103.52	27	5.82	207.53	19	2.18	54.94				
	Gulf Maine	55	0.36	12.67	14	0.51	16.00	21	1.37	8.58				
1977	SNE/Mid-Atl	119	11.92	577.89	46	14.20	729.54	35	1.89	94.67	31,600	1,526.0	27,421	3,157.0
	Geo. Bank	101	0.95	43.76	38	1.34	84.06	33	0.23	7.31				
	Gulf Maine	71	0.06	0.81	23	0.04	0.48	22	0.02	0.11				
1978	SNE/Mid-Atl	134	5.68	198.36	41	8.93	362.00	52	1.37	23.26	16,583	566.0	18,800	1,251.0
	Geo. Bank	156	1.57	45.63	53	4.04	116.10	50	0.41	11.01				
	Gulf Maine	120	0.01	0.18	39	0.06	2.08	45	0.00	0.01				

Table 8. Illex Biomass Estimates (Mean Weights In Kg And Numbers Per Tow By Strata Set)

Year	Area	TOTAL # tows	TOTAL wt/tow	TOTAL #/tow	DAY # tows	DAY wt/tow	DAY #/tow	NIGHT # tows	NIGHT wt/tow	NIGHT #/tow	B_1 wt (mt)	B_1 # ($\times 10^6$)
1968	SNE/Mid-Atl	124	0.48	2.62	40	0.28	1.69	43	0.13	0.60	1,845.4	9.70
	Geo. Bank	69	0.34	1.68	22	0.72	2.35	25	0.04	0.26		
	Gulf Maine	50	0.10	0.46	18	0.18	1.49	15	0.04	0.25		
1969	SNE/Mid-Atl	119	0.10	0.98	38	0.17	1.64	39	0.06	0.50	418.8	3.60
	Geo. Bank	73	0.04	0.48	25	0.04	0.57	32	0.06	0.43		
	Gulf Maine	51	0.07	0.27	17	0.14	0.51	16	0.00	0.07		
1970	SNE/Mid-Atl	122	0.29	3.83	38	0.21	4.53	40	0.14	1.54	1,523.6	14.60
	Geo. Bank	70	0.24	2.62	23	0.60	4.89	24	0.05	0.56		
	Gulf Maine	53	0.29	0.82	18	0.50	1.36	16	0.02	0.11		
1971	SNE/Mid-Atl	125	0.28	1.95	43	0.24	1.94	41	0.13	0.71	2,024.1	10.10
	Geo. Bank	73	0.46	1.70	27	0.55	2.23	24	0.25	0.93		
	Gulf Maine	55	0.43	1.81	16	1.21	4.44	20	0.16	0.85		
1972	SNE/Mid-Atl	114	0.45	4.86	31	0.42	8.12	40	0.27	1.57	1,716.1	15.00
	Geo. Bank	73	0.20	1.07	29	0.15	0.83	21	0.15	0.72		
	Gulf Maine	55	0.19	0.75	18	0.34	1.50	18	0.04	0.09		
1973	SNE/Mid-Atl	111	0.07	0.62	38	0.08	0.66	35	0.03	0.30	1,862.0	8.20
	Geo. Bank	73	0.50	2.51	27	0.70	2.51	28	0.44	3.29		
	Gulf Maine	54	0.63	2.02	16	1.57	5.19	21	0.09	0.26		
1974	SNE/Mid-Atl	108	0.18	4.07	33	0.11	7.98	38	0.20	1.23	2,500.0	19.02
	Geo. Bank	74	0.16	1.12	20	0.22	1.19	26	0.09	0.58		
	Gulf Maine	57	1.16	3.92	19	1.76	5.88	21	0.46	1.41		
1975	SNE/Mid-Atl	115	0.99	15.74	41	1.11	23.08	36	0.23	1.58	8,306.0	60.25
	Geo. Bank	73	1.11	6.41	23	1.85	13.01	25	0.76	2.03		
	Gulf Maine	65	2.71	7.31	19	3.34	9.17	23	0.29	0.60		
1976	SNE/Mid-Atl	123	6.23	19.79	37	2.60	11.23	40	3.90	10.49	42,929.0	134.34
	Geo. Bank	67	14.78	45.03	27	8.06	23.83	19	3.54	9.82		
	Gulf Maine	55	4.20	13.75	14	5.25	16.83	21	1.35	3.47		
1977	SNE/Mid-Atl	119	4.46	15.79	46	3.93	16.21	35	2.32	7.71	21,747.0	73.34
	Geo. Bank	101	5.02	15.81	38	4.09	15.23	33	5.31	16.23		
	Gulf Maine	71	2.21	7.24	23	4.26	14.82	22	0.40	1.29		
1978	SNE/Mid-Atl	134	2.57	19.50	41	2.53	24.66	52	1.97	8.54	26,435.0	120.68
	Geo. Bank	156	12.17	44.67	53	34.25	109.75	50	2.68	12.56		
	Gulf Maine	120	1.91	5.84	39	3.75	11.25	45	0.41	1.41		

Figure 1. A. US bottom trawl survey strata and ICNAF Subareas 4 and 5 and Statistical Area 6.

B. Geographical areas off the Northeast coast of the US.



BILLING Code 3510-22-C

PART 611—FOREIGN FISHING [Amended]

1. It is proposed to retain those regulations in Part 611 governing foreign fishing for Atlantic Squid.

PART 655—SQUID FISHERY OF THE NORTHWEST ATLANTIC

2. 50 CFR Part 655 is proposed to be amended as follows:

§ 655.1 [Amended]

Section 655.1(b) is amended by adding the following sentence at the end of the paragraph: "The Appendix to 50 CFR 611.20 contains the TALFF for squid."

§ 655.2 [Amended]

Section 655.2 is amended as follows:

1. Revise the definition of "Atlantic squid" to read as follows:

"*Atlantic squid* or *squid* means the species *Illex illecebrosus* (short-finned or summer squid) and *Loligo pealei* (long-finned or bone squid)."

* * * * *

2. Add the following definitions, in alphabetical sequence:

"*Charter or party boat* means any vessel which carries passengers for hire to engage in fishing."

"*Fishing week* means the weekly period beginning 0001 hours Sunday and ending 2400 hours Saturday."

"*Illex* means the species *Illex illecebrosus.*"

"*Loligo* means the species *Loligo pealei.*"

* * * * *

3. Revise the definition of "Vessel of the United States" to read as follows:

* * * * *

"*Vessel of the United States* means:

(a) Any vessel documented or numbered by the United States Coast Guard under United States Law; or

(b) Any vessel under five net tons which is registered under the laws of any State."

§ 655.3 [Amended]

Section 655.3(a) is revise to read as follows: Persons affected by these regulations should be aware that other Federal and State statutes and regulations may apply to their activities.

* * * * *

§ 655.4 [Amended]

In § 655.4:

1. Revise paragraph (a) to read as follows:

(a) *General.* Every fishing vessel which fishes for Atlantic squid under this Part must have a fishing permit issued under this section. Vessels are exempt from this requirement if they catch no more than 100 pounds of squid per trip.

* * * * *

2. Revise the first sentence of paragraph (c)(1) by inserting "fishing" before "permit".

3. Amend paragraph (c)(2) by deleting subdivisions (vi) through (ix) and by substituting the following:

* * * * *

(c) * * *

(2) * * *

(vi) The type of construction, type of propulsion, and type of echo sounder of the vessel;

(vii) The permit number of any current or previous Federal fishing permit issued to the vessel;

(viii) The approximate fish hold capacity of the vessel;

(ix) The type and quantity of fishing gear used by the vessel;

(x) The average size of the crew, which may be stated in terms of a normal range; and

(xi) Any other information concerning vessel and gear characteristics requested by the Regional Director.

* * * * *

4. Revise paragraph (c)(3) to read as follows:

* * * * *

(c) * * *

(3) Any change in the information specified in paragraph (c)(2) of this section shall be submitted in writing to the Regional Director by the owner within 15 days of any such change.

* * * * *

5. Revise paragraph (g) to read as follows:

* * * * *

(g) *Duration.* A permit shall continue in effect until it expires or is revoked, suspended, or modified pursuant to 50 CFR Part 621.

* * * * *

6. Revise paragraph (i) to read as follows:

* * * * *

(i) *Replacement.* Replacement permits may be issued by the Regional Director when requested in writing by the owner or operator stating the need for replacement, the name of the vessel, and the fishing permit number assigned. An application for a replacement permit shall not be considered a new application.

* * * * *

§ 655.5 [Amended]

Section 655.5 is amended as follows:

1. Revise paragraph (a)(1)(i) to read as follows:

(a) * * *

(1) * * *

(i) Maintain on board the vessel an accurate and complete fishing vessel record on forms supplies by the Regional Director.

* * * * *

2. Revise paragraph (a)(3) to read as follows:

(a) * * *

(3) Fishing vessel records shall contain information on a daily basis for the entirety of any trip during which squid or any other regulated species are caught.

(i) The information shall include dates of fishing, type and size of gear used, areas fished, duration of fishing time, time period of tow or gear set, and the estimated weight of each species taken.

(ii) Information on squid catches shall be provided separately for *Illex* and *Loligo.*

* * * * *

4. Revise paragraph (b) to read as follows:

* * * * *

(b) *Fish dealer or processor reports.* (1) Any person who receives Atlantic squid for a commercial purpose from a fishing vessel subject to this Part shall file a weekly report (Sunday through Saturday) within 48 hours of the end of any week in which squid is received. The report shall include information on all first purchases of squid (listing *Illex* and *Loligo* separately) and all other fish made during that week. Such information shall include date of transaction, name of the vessel from which Atlantic squid is received, and the amount and prices paid for squid and other fish received.

(2) *Domestic squid processor capacity.* [Reserved]

(3) Reports required by § 655.5(b) shall be made on forms supplied by the Regional Director and at a location designated by him.

(4) Any person required by § 655.5(b) to file reports shall permit an Authorized Officer or an employee of the National Marine Fisheries Service designated by the Regional Director to make inspections, and to inspect or reproduce any records or books relating to information required to be contained in these reports. These inspections may take place at the principal place of business or at the location where these required records regularly are kept.

* * * * *

§ 655.6 [Amended]

Section 655.6 is amended as follows:

1. In the second sentence of paragraph (a), insert "U.S." before "Coast Guard" wherever it appears.

2. Revise paragraph (b)(2) to read as follows:

* * * * *

(b) * * *

(2) The Official Number shall be permanently affixed to or painted on the vessel and shall be block Arabic numerals in contrasting color. However, charter or party boats may use nonpermanent markings to display the Official Number whenever the vessel is fishing for squid.

* * * * *

3. Delete paragraph (b)(3).

§ 655.7 [Amended]

Section 655.7 is amended as follows:

1. In paragraph (c) change "fish dealer/processor report" to "fish dealer or processor report."

2. In paragraph (f), delete "or" following "control" and in its place insert "of".

3. In paragraph (f), delete "this" before "Act" and in its place insert "the".

4. In paragraph (i), change "fish dealer/processor reports" to "fish dealer or processor reports."

§ 655.21 [Amended]

Section 655.21 is amended as follows:

1. Revise paragraphs (a) and (b) to read as follows:

(a) *Levels of harvest.* The allowed levels of harvest of Atlantic squid on a fishing-year basis are 30,000 mt of *Illex* and 44,000 mt of *Loligo*. The initial levels of harvest by vessels of the United States are 5,000 mt of *Illex* and 7,000 mt of *Loligo."*

(b) *Reserves.* A reserve of 13,000 mt for *Illex* and 19,000 mt for *Loligo* is available for adjustments to the initial level of foreign harvest.

* * * * *

2. Renumber paragraph (b) as paragraph (c).

§ 655.22 Allocation [Reserved]

Amend § 655.22 as follows: "Allocation. [Reserved]"

§ 655.23 [Amended]

Section 655.23 is amended as follows:

Revise paragraph (a), (b) and the introductory text of paragraph (c) to read as follows:

(a) *General.* The Regional Director shall periodically monitor catches of Atlantic squid.

(b) *Decision to close.* The Assistant Administrator shall close the domestic fishery for either species when the domestic harvest for that species has reached 80 percent of the total of the initial level of domestic harvest plus the part of the reserve which has not been allocated to the initial level of foreign harvest.

(c) *Notice of closure.* If the Assistant Administrator determines that a closure of either the *Illex* or the *Loligo* domestic fishery is necessary, the Assistant Administrator shall:

* * * * *

[FR Doc. 80-10142 Filed 4-2-80; 8:45 am]

BILLING Code 3510-22-M

50 CFR Parts 611 and 656

Atlantic Mackerel Fishery

AGENCY: National Oceanic and Atmospheric Administration (NOAA)/ Commerce.

ACTION: Approval and partial disapproval of amendment to the Atlantic Mackerel Fishery Management Plan, notice of proposed rulemaking and request for comments.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, has approved, with the exception of one provision, an amendment to the Fishery Management Plan for Mackerel Fishery of the Northwest Atlantic Ocean (FMP). Proposed regulations to implement the management measures contained in the amendment would (1) establish an initial level of harvest for United States vessels catching Atlantic mackerel and (2) establish a reserve from which mackerel may be distributed to the domestic and foreign fisheries. All regulations governing the foreign fishery for mackerel contained in 50 CFR Part 611 are continued in effect without change. The proposed amendments to Part 656, which include technical changes to the Atlantic mackerel regulations now in effect, are promulgated as emergency regulations in the final rule section of this issue of the **Federal Register.**

DATES: Comments on the proposed regulations and the amendment to the FMP are invited for a 45-day period. All comments must be submitted in writing on or before May 16, 1980.

ADDRESS: All comments on the amendment to the FMP and the proposed regulations should be sent to: Regional Director, National Marine Fisheries Service, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930. Mark: "Comments on Proposed Mackerel Regulations" on the outside of the envelope.

FOR FURTHER INFORMATION CONTACT: Mr. Allen E. Peterson, Jr. Regional Director (at above address) Telephone (617) 281-3600.

SUPPLEMENTARY INFORMATION: The FMP was prepared by the Mid-Atlantic Fishery Management Council (Council) and approved by the Assistant Administrator on July 3, 1979, in accordance with the Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. 1801 *et seq.* (Act). Final regulations implementing the FMP were published on February 21, 1980, (45 FR 11497). These regulations establish annual quotas on a fishing year basis (April 1–March 31) for domestic vessels harvesting Atlantic mackerel *(Scomber scombrus),* as well as a mechanism for making in-season reallocations of mackerel between the domestic commercial and recreational fisheries. The FMP was to expire on March 31, 1980.

On March 17, 1980, the Assistant Administrator approved, with one exception, an amendment to the FMP. The approved provisions of the amendment: (1) extend the FMP through March 31, 1981; (2) increase the optimum yield (OY) from 15,200 to 30,000 metric tons (mt); (3) increase domestic annual harvest capacity (DAH) from 14,000 to 20,000 mt; (4) increase the total allowable level of foreign fishing (TALFF) from 1,200 to 4,000 mt; and (5) establish a reserve of 6,000 mt, which is available for distribution to the domestic and foreign fisheries.

Optimum Yield

The 1979 mackerel stock assessment indicates an Atlantic mackerel stock size of 631,000 mt, a significant increase over the 1978 stock size (515,000 mt). This increase is primarily the result of an abundant 1978 year class. This year class has also helped rebuild the spawning stock size at the beginning of 1980 to a range of 421,000 to 488,000 mt; the size of the spawning stock at the beginning of 1979 was 358,000 mt. Because of the increased abundance of mackerel, the Council raised the OY for fishing year 1980–81 from 15,200 mt to 30,000 mt. The Council selected a conservative OY to assure preservation of the stock and to permit further stock rebuilding.

DAH and TALFF

With an increased abundance of mackerel, the Council expects recreational catches to rise. However, the Council does not have enough information to ascertain whether domestic commercial harvests will also expand. Therefore, the Council has set the domestic annual harvesting capacity (DAH) at 20,000 mt for fishing year 1980–81; this is a 6,000 mt increase over the previous fishing year. Unlike the original DAH, which "allocated" 9,000 mt to the recreational fishery and 5,000 mt to the commercial fishery, there is no distinction in the 20,000 mt DAH between recreational and commercial

fisheries. The Council believes that the DAH plus the reserve provides enough mackerel for all domestic fishermen; therefore, apportioning mackerel among domestic recreational and commercial fishermen is unnecessary and would only complicate management and increase management costs.

Because of the increased abundance of mackerel, foreign vessels directing their fishing toward such species as squid are likely to catch greater incidental amounts of mackerel. To prevent restricting these directed foreign fisheries, TALFF has been increased from 1,200 mt to 4,000 mt.

Reserve

The Council's uncertainties as to the exact harvesting capacities of the domestic recreational and commercial fisheries, partially caused by the rapid increase in stock size, and its desire to provide an opportunity for expansion of the commercial mackerel fishery for export, resulted in the Council's establishment of a reserve at 6,000 mt. Should the increased abundance of mackerel allow the domestic fisheries to increase their harvest during the fishing year beyond DAH, mackerel in the reserve are available to the domestic fishery. Mackerel may be allocated from the reserve to TALFF only if projections indicate the fish will not be harvested by domestic commercial and recreational fishermen.

A reserve is used in situations of uncertainty regarding growth in the domestic fisheries. For an allocation procedure from reserve to TALFF to be acceptable, the procedure must allow, in practice, a reasonable opportunity for increasing TALFF and permitting foreign harvest. Otherwise, OY may not be achieved. This amendment's procedure and criteria for allocating mackerel from the reserve to TALFF would have provided for a review of domestic fishing activities after six months of the fishing year had passed. If the Assistant Administrator had determined that the estimated domestic harvest of mackerel for the fishing year would be less than 80 percent of the total of DAH and the reserve, only a portion of the reserve would have been allocated to TALFF.

However, the Assistant Administrator has found that this provision would prevent flexibility in making in-season adjustments to TALFF and allocating the entire reserve, even if domestic harvesters do not reach DAH. He has further determined that this provision is inconsistent with National Standard 1 of the Act, which requires that "Conservation and management measures shall prevent overfishing while achieving on a continuing basis, the optimum yield from each fishery." Consequently, he has disapproved this provision of the amendment. In accordance with Section 304(a) of the Act, he has notified the Council, in writing, of his partial disapproval. The Council has 45 days from the date of notification to resubmit the provision. Proposed regulations concerning the allocation of the reserve will be published in the near future (see discussion below under "Proposed Regulations").

Proposed Regulations

The proposed amendments to the regulations would implement the conservation and management measures contained in the amendment: (1) an optimum yield of mackerel is established at 30,000 mt; (2) an initial level of domestic harvest is set at 20,000 mt; and (3) a reserve of 6,000 mt is established for distribution to the domestic and foreign fisheries as appropriate. In addition, the proposed regulations would revise the criteria for closing the fishery.

Technical changes to the regulations currently in effect are also reflected in the proposed amendments. These changes are intended to provide uniform language with the regulations implementing other fishery management plans prepared by the Council.

Two sections in the proposed regulations are "Reserved" and will be published in the near future. Section 656.22 ("Allocation") will be promulgated when the Assistant Administrator approves a mechanism which allocates mackerel from the reserve to TALFF in a manner which is consistent with the provisions of the Act. A regulatory procedure for reallocation from the reserve to DAH is unnecessary, since the entire reserve is implicitly available to the domestic fishery, if needed.

Section 656.5(b)(2) ("Domestic mackerel processor capacity"), which will implement a provision of the original FMP, will be promulgated when the National Marine Fisheries Service, after consultation with industry, develops a form and establishes a system to receive reports on capacity from mackerel processors.

One person who commented on the original FMP was concerned that the regulations could be applied to vessels which fish in the Gulf of Mexico. The FMP states that *Scomber scombrus* ranges from Labrador to North Carolina; therefore, these mackerel regulations would apply only to vessels fishing in that geographic area within waters subject to the exclusive fishery management jurisdiction of the United States. In § 656.2, the definition of "Atlantic mackerel or mackerel" has been amended to specify the range of the regulations as they pertain to this species.

Emergency Regulations

In accordance with the provisions of Section 305(e) of the Act, these proposed regulations are implemented as emergency measures in the final rule section of this issue of the **Federal Register**. The Assistant Administrator has determined that the emergency action is necessary to provide conservation and management measures to govern fishing for mackerel until final regulations to implement the partially approved amendment are promulgated during May, 1980. A gap in the regulatory process during the early part of the 1980–81 fishing year might have jeopardized the credibility, continuity, and effectivenes of the entire management system for this newly regulated fishery.

National Environmental Policy Act of 1969 (NEPA)

The development and implementation of this amendment have been deemed a non-significant Federal action which does not affect the quality of the human environment.

Executive Order 12044

For the purpose of Executive Order 12044, the Assistant Administrator has determined that this action does not constitute a significant change to the regulations. The creation of a reserve which allows additional flexibility in the regulations so that optimum yield can be achieved, is considered a refinement but not a material or significant change to the regulations. The increase in OY is consistent with the objectives of the FMP and responds to natural fluctuations in the fish biomass.

The amendment to the mackerel FMP is set forth below.

I. Abbreviations and Definitions Of Terms Used In This Document

cm = centimeter
DAH = Domestic Annual Harvest = the capacity of US fishermen to harvest mackerel and their intent to use that capacity
DAP = Domestic Annual Processing = the capacity of US processors to process, include freeze, mackerel and their intent to use that capacity
EIS = Environmental Impact Statement
FCZ = Fishery Conservation Zone
fishing year = the 12 month period beginning April 1
FMP = Fishery Management Plan
FRG = Federl Republic of Germany

GDR = German Democratic Republic
GIFA = Governing International Fishery Agreement
ICNAF = International Commission for the Northwest Atlantic Fisheries
km = kilometer
metric ton = mt = 2,204.5 pounds
MSY = Maximum Sustainable Yield
NMFS = National Marine Fisheries Service
NOAA = National Oceanic and Atmospheric Administration
NPF = Non-Processed Fish = the capacity of US fishermen to harvest mackerel which is not processed; essentially mackerel caught by marine recreational anglers.
OY = Optimum Yield
PMP = Preliminary Fishery Management Plan
Secretary = Secretary of Commerce
SEIS = Supplemental Environmental Impact Statement
TAC = Total Allowable Catch
TALFF = Total Allowable Level of Foreign Fishing

The Fishery Management Plan (FMP) for Atlantic Mackerel was approved by the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration (NOAA) on 3 July 1979. The FMP is for fishing year 1979–1980 (1 April 1979–31 March 1980). The basic purpose of Amendment #1 to this FMP is to extend it beyond the end of fishing year 1979–1980.

The natural range of, and fishery for, Atlantic mackerel extends from approximately Cape Hatteras, North Carolina, to Labrador, Canada. Within US waters this resource and its harvest are found both in the territorial sea and the FCZ. The management unit for this FMP is all Atlantic mackerel under US jurisdiction. The objectives of the plan are to:

1. Provide opportunity for increased domestic recreational and commercial catch;

2. Maximize the contribution of recreational fishing for Atlantic mackerel to the national economy;

3. Maintain the spawning stock size of Atlantic mackerel at or above its size in 1978;

4. Achieve efficient allocation of capital and labor in the mackerel fishery; and

5. Minimize costs to taxpayers of development, research, management, and enforcement in achieving these objectives.

The following management measures are included in the FMP:

1. Restriction of Atlantic mackerel catches in the FCZ so that the total domestic catch from the territorial sea and the FCZ does not exceed 14,000 metric tons for the 1979–1980 fishing year, allocating 9,000 metric tons to the sport fishery and 5,000 metric tons to the domestic commercial fishery. The Council will reevaluate these allocations in October, 1979, or at capture of 5,000 tons of mackerel in either the sport or commercial fishery, or when 70% of either allocation has been taken in the FCZ, whichever comes first. The Regional Director of the NMFS, with the concurrence of the Council, may then redistribute these allocations between the US recreational and commercial fisheries for the balance of the fishing year.

2. Restriction of accumulative foreign Atlantic mackerel harvest to 1,200 metric tons for the 1979–1980 fishing year. This amount is intended to provide only for incidental foreign catches of mackerel. At such time as a foreign nation takes its allocation of Atlantic mackerel, it will be required to cease fishing operations that would lead to an additional catch of Atlantic mackerel.

3. All vessels fishing commercially for Atlantic mackerel, either directly or as a by-catch from other fisheries, must be registered. This provision also applies to all vessels for hire for fishing recreationally directly or indirectly for mackerel.

4. Weekly reports on mackerel catches must be filed by foreign and domestic fishermen and domestic dealers and processors must submit weekly reports on any transactions involving mackerel.

Alternatives considered for Amendment #1 were:

1. Take No Action At This Time—No action to limit the catches of Atlantic mackerel could result in a decrease of Atlantic mackerel abundance. This alternative would mean that the FMP would lapse at the end of fishing year 1979–1980. The NMFS would be required to prepare a Preliminary Management Plan (PMP) to regulate the foreign fishery. It is likely that the PMP would result in a large reallocation of mackerel to foreign fleets.

PMPs regulate foreign, but not domestic, fishermen. One effect of this alternative would be that data that would be collected on domestic fishing and processing efforts as a result of this plan could not be collected as effectively, and that assessments of the scope and development of the domestic fishery would not be as accurate as they would be with the FMP.

2. Continue The Current FMP Through Fishing Year 1980–1981 With No Other Changes—This would result in an Optimum Yield of 15,200 mt, Domestic Annaul Harvest of 14,000 mt, Domestic Annual Processing of 5,000 mt and a Total Allowable Level of Foreign Fishing of 1,200 mt. It would require that the FMP be amended again for fishing year 1981–1982.

3. Continue The FMP Without Time Limit—This would eliminate the need for annual amendments to the FMP merely to extend it into the next fishing year. The FMP could still be amended when necessary to incorporate changes in Optimum Yield, Domestic Annual Harvest, Domestic Annual Processing, or other management measures.

4. Continue The FMP With Changes To Optimum Yield And Quotas—The most recent biological assessment indicates that mackerel stock size has greatly increased over the 1978 level. This suggests that the stock rebuilding objective of the original FMP can still be met with a total catch (in US and Canadian waters) and Optimum Yield in fishing year 1980–1981 (and beyond) significantly greater than those in the original FMP. This and other information also indicates that increases in Domestic Annual Harvest, i.e., the overall US mackerel harvesting capacity, and Non-Processed Fish, defined here to equal the mackerel harvesting capacity of US recreational fishermen, estimates are justified, because the US recreational harvesting capacity is expected to increase with increases in mackerel stock size. Data on the US commercial harvesting capacity and on the intent and desire of US processors to process mackerel, however, are limited at present.

Based on the best scientific information available, a reasonable alternative, therefore, is to specify Optimum Yield at 30,000 mt, Domestic Annual Harvest at 20,000 mt, Non-Processed Fish at 15,000 mt, and Domestic Annual Processing at 5,000 mt. This would leave a surplus of 10,000 mt. Given the developing nature of the US commercial fishery, as well as imprecise recreational fishery data, it is desirable that at least a portion of any surplus (10,000 mt, as modified by changes in any of the above values) should initially be placed in a reserve and not totally allocated to the Total Allowable Level of Foreign Fishing. It is therefore proposed that the initial Total Allowable Level of Foreign Fishing be 4,000 mt, and that a reserve of 6,000 mt be provided. The above values, as modified after the review process, could be used for a finite (e.g., one or two year) or indefinite extension of the FMP as discussed in Alternative 3.

5. Revise Objective 4—Objective 4 states "Achieve efficient allocation of capital and labor in the mackerel fishery." It is proposed that the objective be revised to read "Achieve efficiency in harvesting and use." The revision

more clearly states the Council's intent than does the objective as currently worded.

A detailed discussion of these alternatives is given in Section XII of Amendment #1.

The Council has adopted Alternatives 4 and 5 for a one year extension of the FMP. Therefore, for fishing year 1980–1981, the Optimum Yield will be 30,000 mt, initial Domestic Annual Harvest will be 20,000 mt, the estimate of Non-Processed Fish is 15,000 mt, the initial TALFF is 4,000 mt, and the Reserve is 6,000 mt.

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APPENDICES

APP I. Stock Assessment
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IV. Introduction

This Amendment #1 to the Atlantic Mackerel FMP is designed to extend the FMP beyond the end of fishing year 1979–1980 (31 March 1980) and to make appropriate changes to optimum yield and quotas. The basic data about the fishery has not changed since the FMP was adopted by the Mid-Atlantic Fishery Management Council in November, 1978.

The latest stock assessment is presented in Appendix I of Amendment #1.

The alternatives presented in Amendment #1 are essentially refinements of the regime in the FMP.

V. Description of Stocks

The most recent stock assessment is presented as Appendix I to Amendment #1, and is discussed in Section XII–5. This report updates the assessment used in the original FMP. It includes catch statistics, abundance indices, fishing mortality and stock size estimates, and projected options for catch in 1980, given various levels of catch in 1979, with resulting spawning stock biomass in 1981.

The assessment states, ". . . the 1978 year-class is the largest to enter the fishery since the 1969 year-class . . . Spawning stock biomass available at the beginning of 1980 will vary from an estimated 488,000 tons (36% increase from 1979), assuming a (total international) catch of 30,000 tons, to 421,000 tons (18% increase from 1979), assuming a catch of 100,000 tons." The assessment data indicate that, ". . . under all catch assumptions presented for 1979–1980, there is an accompaning projection of stock increase in 1980–1981. . . ."

VI. Description of Habitat

No data are available which would necessitate a change to this section of the FMP.

VII. Fishery Management Jurisdiction, Laws, and Policies

No data are available which would necessitate a change to this section of the FMP.

VIII. Description of Fishing Activities

No data are available which would necessitate a change to this section of the FMP.

IX. Description of Economic Characteristics of the Fishery

No data are available which would necessitate a change to this section of the FMP.

X. Description of Businesses, Markets, and Organizations Associated With The Fishery

No data are available which would necessitate a change to this section of the FMP.

XI. Description of Social and Cultural Framework of Domestic Fishermen and Their Communities

No data are available which would necessitate a change to this section of the FMP.

XII. Determination of Optimum Yield

XII–1. Specific Management Objectives

The Mid-Atlantic Council adopted the following objectives for the original FMP:

1. Provide opportunity for increased domestic recreational and commercial catch;
2. Maximize the contribution of recreational fishing for Atlantic mackerel to the national economy;
3. Maintain the spawning stock size of Atlantic mackerel at or above its size in 1978.
4. Achieve efficient allocation of capital and labor in the mackerel fishery; and
5. Minimize costs to taxpayers of development, research, management, and enforcement in achieving these objectives.

XII–2. Description of Alternatives and XII–3. Analysis of Beneficial and Adverse Impacts Of Potential Management Options

The following management measures are included in the FMP:

1. Restriction of Atlantic mackerel catches in the FCZ so that the total domestic catch from the territorial sea and the FCZ does not exceed 14,000 metric tons for the 1979–1980 fishing year, allocating 9,000 metric tons to the sport fishery and 5,000 metric tons to the domestic commercial fishery. The Council will reevaluate these allocations in October, 1979, or at capture of 5,000 tons of mackerel in either the sport or commercial fishery, or when 70% of either allocation has been taken in the FCZ, whichever comes first. The Regional Director of the NMFS, with the concurrence of the Council, may then redistribute these allocations between the US recreational and commercial fisheries for the balance of the fishing year.
2. Restriction of accumulative foreign Atlantic mackerel harvest to 1,200 metric tons for the 1979–1980 fishing year. This amount is intended to provide only for incidental foreign catches of mackerel. At such time as a foreign nation takes its allocation of Atlantic mackerel, it will be required to cease fishing operations that would lead to an additional catch of Atlantic mackerel.
3. All vessels fishing commercially for Atlantic mackerel, either directly or as a by-catch from other fisheries, must be registered. This provision also applies to all vessels for hire for fishing recreationally directly or indirectly for mackerel.
4. Weekly reports on mackerel catches must be filed by foreign and domestic fishermen and domestic

dealers and processors must submit weekly reports on any transactions involving mackerel.

Alternatives considered for Amendment #1 were:

1. *Take No Action At This Time*—This alternative would mean the the FMP would lapse at the end of fishing year 1979–1980. If this occurred, the NMFS would be required to prepare a PMP for this fishery. A PMP would annually set an OY and would estimate DAH and, thus, TALFF. A PMP, however, regulates foreign, but not domestic, harvesting. A reversion of PMP management might result in a relatively large annual reallocation of mackerel to foreign fisheries.

Another effect of this alternative would be that data on the domestic harvesting and processing capacities that would be collected as a result of the recordkeeping provisions of the FMP could not be collected, or could be collected as effectively. This would seriously limit assessments of the scope and development of the US commercial and recreational fisheries, and would eliminate other fishery and biological information needed to assess OY, DAH, DAP, and condition of the stock.

In addition, it is probable that the US and Canada will conclude and implement a bilateral fisheries treaty in the near future. Since the mackerel fishery extends significantly into Canadian waters, it is highly probable that such a treaty will specify bilateral management of this resource. Should this occur, the US would be required to manage the domestic (sport and commercial) and foreign harvest of this species in US waters in order to conform with the terms of such a treaty and whatever management measures (such as quotas) as might be promulgated on an annual basis by the international management regime. Established FMP management will greatly facilitate implementation of such bilateral managment measures, since bilateral management would require regulation of US fishermen and, under the FCMA, such regulation is possible only with an FMP, and will ensure equitable treatment of the domestic fisheries sectors under such a regime.

2. *Continue The Current FMP Through Fishing Year 1980–1981 With No Other Changes*—This would require that the FMP be amended again for the period beyond 31 March 1981. Under this alternative, OY, DAH, DAP, and TALFF would remain the same as those in the original FMP (OY =15,200 mt, DAH =14,000 mt, DAP =5,000 mt, and TALFF =1,200 mt).

This alternative might result in a closure of the US fisheries in fishing year 1980–1981 if US landings exceeded 14,000 mt during that time. A closure would be likely because of the predicted increased abundance of mackerel which should significantly increase the recreational catch as well as the commercial by-catch. Since the US mackerel fisheries are highly seasonal by region, this possibility would have grave implications for the economic welfare of the US fisheries, not only for mackerel, but also for other species with which mackerel is usually taken. Because mackerel migrate along the coast, a closure during the second half of the fishing year could result in a violation of National Standard 4 (See Section XII–5) because fishermen from certain areas would not have their historic opportunity to fish for mackerel. Since the OY specified by the original FMP is significantly less than the expected surplus production from the mackerel stock, and since the stock currently appears to be increasing in abundance, a closure of the US fisheries after their harvest of 14,000 mt would result in adverse economic impacts on US interests with minimal concomitant conservation benefits.

3. *Continue The FMP Without Time Limit With No Other Changes*—This would eliminate the need for annual amendments to the FMP. The FMP would only require amendments as necessary when significant changes occurred in the US industry and/or in stock abundance. The values of OY, DAH, DAP, and TALFF specified in the current FMP would be set without change for each fishing year.

The adverse impacts of this alternative are identical to those identified for Alternative 2 and would, in fact, be exacerbated by this Alternative, due to the developing nature of the US fisheries and the rapidly increasing abundance of mackerel. The only potential beneficial impact of this Alternative would be a reduction in administrative and regulatory costs. These savings, however, would probably be offset or exceeded by the resultant additional costs of stringent quota enforcement.

4. *Continue The FMP With Changes To OY And Quotas*—The most recent biological assessment indicates that mackerel stock size has greatly increased over the 1978 level. This suggests that the stock rebuilding objective of the original FMP can still be met with a total catch (in US and Canadian waters) and Optimum Yield in fishing year 1980–1981 (and beyond) significantly greater than those in the original FMP. This and other information also indicate that increases in DAH (Domestic Annual Harvest, i.e., the overall US mackerel harvesting capacity) and NPF (Non-Processed Fish, defined here to equal the mackerel harvesting capacity of US recreational fishermen) estimates are justified, because the US recreational harvesting capacity is expected to increase with increases in mackerel stock size. Data on the US commercial harvesting capacity and on the intent and desire of US processors to process mackerel, however, are limited at present.

Based on the best available scientific information, a reasonable alternative, therefore, is to specify Optimum Yield at 30,000 mt, DAH at 20,000 mt, NPF at 15,000 mt, and DAP at 5,000 mt. This would leave a surplus of 10,000 mt. Given the developing nature of the US commercial fishery, as well imprecise recreational fishery data, it is desirable that at least a portion of any surplus (10,000 mt, as modified by changes in any of the above values) should initially be placed in a reserve and not totally allocated to TALFF. It is therefore proposed that the initial TALFF be 4,000 mt, and that a reserve of 6,000 mt be provided. The above values, as modified after the review process, could be used for a finite (e.g., one or two year) or indefinite extension of the FMP as discussed in Alternative 3.

5. *Revise Objective 4*—Objective 4 states "Achieve efficient allocation of capital and labor in the mackerel fishery." It is proposed that the objective be revised to read "Achieve efficiency in harvesting and use." The revision more clearly states the Council's intent than does the objective as currently worded.

XII–4. Tradeoffs Between The Beneficial And Adverse Impacts Of The Preferred Management Option

Alternatives 4 and 5 have been adopted as the preferred management option. Alternative 4 will have a beneficial impact on the US fisheries in that is will allow for their expansion up to a (commercial and recreational) harvest of 26,000 mt without the need for closures and without the requirement to amend the FMP if US landings increase above the current best estimate of DAH (20,000 mt).

The FMP is extended through this Amendment for one fishing year. The Council believes this to be necessary given (a) the rapidly changing abundance of mackerel which makes difficult recommendations for TACs and OYs for the period beyond fishing year 1980–1981; (b) uncertainties regarding the capacity of the US commercial fishery beyond fishing year 1980–1981; (c) uncertainties as to the terms of

bilateral mackerel management should a fisheries agreement be concluded with Canada; (d) uncertainties regarding the catch of mackerel in Canadian waters in 1979, 1980, and beyond; (e) the desire of the Council to develop a long-term management regime for this resource in the near future. It is possible that such a long-term FMP will entail significantly different capacity assessment and regulatory techniques than are contained in the current FMP and this Amendment.

The original FMP contained an allocation of the US harvesting capacity (DAH) between recreational and commercial fishermen. The preferred option (Alternative 4) eliminates that allocation. The US quota proposed in Alternative 4 (20,000 mt) plus the provision of an additional allocation of up to 6,000 mt from the Reserve, is considered adequate for all US fishermen. The division of that overall quota between the recreational and commercial sectors would, therefore, be an unnecessary provision that would only complicate management and increase management costs.

For purposes of Amendment #1, Domestic Annual Harvest (DAH) is defined to mean the harvesting capacity of the US recreational and commercial fisheries and the intent of those fisheries to harvest that capacity. Non-Processed Fish (NPF) is defined to mean mackerel caught by the recreational fishery. The capacity of the commercial fishery (harvesting and processing) is the difference between Domestic Annual Harvest and Non-Processed Fish (DAH–NPF). In the mackerel fishery, Domestic Annual Processing (DAP) is defined to include all processing methods used by the US commercial fishery, including all handling associated with the domestic fresh fish market. Available information indicates that there are no technical or physical constraints on domestic processing capacity up to the theoretical maximum DAP level of 11,000 mt at this time.

Under Alternative 4, the initial capacity of the domestic recreational mackerel fishery would be 15,000 mt. Since the magnitude of the recreational mackerel catch is dependent to some degree on abundance, and since mackerel abundance appears to be increasing, a reasonable initial estimate of the US recreational capacity (i.e., NPF) is 15,000 mt.

Data on the commercial fishery and on the processing sector are limited at this time. The Council has conducted a survey of processors to assist in developing the estimate of DAP. Based on the limited findings of that survey and other available data, there is no reason at this time to change the estimated commercial catch (and DAP) from the quantities estimated in the original FMP. The initial capacity of the US commercial fishery would, therefore, be 5,000 mt.

Given uncertainties as to the harvesting capacities of the US sport and commercial mackerel fisheries, and in order to provide an opportunity for gradual expansion of the commercial mackerel fishery for export, Alternative 4 would introduce a Reserve into the mackerel management regime. The purpose of the Reserve would be to set aside a portion of the OY remaining after the initial estimate of DAH has been subtracted. This Reserve would be transferred to DAH if actual landings by the US recreational and/or commercial fisheries exceeded the initial estimates in Amendment #1. The portion of the reserve not needed by the US fishery could be allocated to TALFF.

This option would also increase the initial TALFF to 4,000 mt from the 1,200 mt provided in the original FMP. While this is well below the historic foreign mackerel catch, it does represent a signficant increase over the quantity provided in the original FMP. There is also the possibility that the TALFF would be further increased by an allocation from the Reserve to the extent that the Reserve would not be needed by the US fishery. Given the recent increases in mackerel abundance, it is possible that a TALFF of 4,000 mt will not allow directed foreign fishing for this species, but will allow only for a reasonable by-catch of mackerel in directed fisheries for other species. In other words, while the 1,200 mt TALFF in the original FMP was considered to be a reasonable by-catch allowance given the abundance of mackerel during fishing year 1979–1980, the increased abundance of mackerel for fishing year 1980–1981 requires an increased by-catch allowance if foreign fisheries for other species are not to be unreasonably restricted.

The revision to Objective 4 would have no real impact on the management regime. It is intended to clarify the Council's intent. Objective 4 as currently stated ("Achieve efficient allocation of capital and labor in the mackerel fishery") could be interpreted to mean that the Council intends to take a direct role in the economic operation of the fishery. The revised wording ("Achieve efficiency in harvesting and use") more clearly states the Council's intent to not introduce measures in the management regime that would contribute to inefficiency.

The primary positive impact of the adopted options is that quotas would be increased over the levels set in the original FMP while, concurrently, the stock rebuilding program of the original FMP would be continued. A lower OY would accelerate the rate of stock rebuilding and a higher OY would decelerate that rate. Obviously, quotas would need to be changed to reflect changes in OY. It is the Council's conclusion that the OY proposed represents the best present balance between harvest levels and stock rebuilding. The OY and resultant quotas, combined with the Reserve, should not have a adverse impact on the US fishery. To the extent that the proposed initial TALFF is below historic foreign catch levels, it represents a negative impact on the foreign fishery. However, the TALFF proposed, especially when combined with the possible allocation from the Reserve, represents a substantial increase from the TALFF in the original FMP.

XII–5. Specification of Optimum Yield

This Fishery Management Plan proposes an optimum yield based on: (1) the best scientific evidence currently available; (2) the probable impacts of any TAC and bilateral agreement reached with Canada for this species; (3) estimated economic and social impacts of various catch levels to the US fisheries and affected communities; and (4) environmental considerations. The maximum sustainable yield of mackerel has been estimated at 210,000–230,000 mt (Section V–4 of the original FMP). Harvest at this level on an annual basis, however, presupposes annual levels of recruitment well in excess of those observed in most of the last several years. Although the relationship between spawning stock size and recruitment to the fishery is unknown (and may be affected by environmental fluctuations), it is probable that at low levels of abundance, as has recently been the case, there is a positive correlation between spawning stock size and recruitment. Thus, analyses within the FMP and this Amendment include the assumption that the larger the spawning stock size (up to an as yet undetermined level), the higher the probability of larger recruitment to the fishery; conversely, that poor recruitment is more likely to result from small spawning stocks than from very abundant ones.

The most recent mackerel stock assessment (Anderson, 1979; NEFC Lab. Ref. 79–35; Appendix I) indicates that the total mackerel stock size (1979) has increased significantly over the 1978 level (Table I–10). This is due primarily to a very abundant 1978 year-class, which was estimated at age 1 to be 3–4

times as large as the 1975–1977 year-classes at age 1. Because the 1978 year-class will not begin to enter the spawning stock until 1980, however, increases in mackerel spawning stock size will lag increases in overall stock size. The spawning stock size in 1979 is estimated to be about 40% (by weight and number) of the 1962–1979 average spawning stock size, and slightly smaller than the estimated spawning stock size in 1978. The spawning stock size is expected to increase significantly starting in 1980, due to the maturation of the abundant 1978 year-class.

Table I–18 in Appendix I illustrates possible combinations of total mackerel catches in 1979 and 1980 and their consequential effects upon mackerel spawning stock size in 1981. Possible total catches in 1979 from 30,000 to 100,000 mt and possible total catches in 1980 from 15,000 to 150,700 mt have been considered. Table I–18 suggests that if the total (US and Canadian waters) mackerel catch in 1979 is approximately 65,200 mt, then a total catch of about 90,000 mt could be taken in 1980, with a resulting spawning stock size in 1981 at least 50% greater than that in 1979, and at least 20% greater than in 1980. Table I–18 indicates that a total catch of between (approximately) 16,000 and 140,000 mt in 1980 will result in a spawning stock size in 1981 of between (approximately) 620,000 to 490,000 mt, respectively (assuming a total 1979 catch of about 65,000 mt). A spawning stock size of 490,000 mt in 1981 would be approximately 1.4 times the size of the 1979 spawning stock (in weight), but would also represent a spawning stock size of about 55% of the average size from 1962–1979. Similarly, a 1980 total catch of about 16,000 mt would yield a 1981 spawning stock size of about 1.7 times the 1979 size and about 70% of the 1962–1979 average size. If, however, the 1979 mackerel catch in Canadian waters exceeds that assumed above (i.e., is significantly greater than 50,000 mt), then the increases in stock sizes for 1981 at the above 1980 catch levels would be less.

In order to make a meaningful prediction of the biological consequences of various Optimum Yield levels, it was necessary to assume that the entire OY provided in the original FMP for fishing year 1979–1980 (15,200 mt) will be harvested and that the catch of mackerel in Canadian waters (by Canadian and foreign vessels) for fishing year 1979–1980 will be at least 50,000 mt. Table 1 lists possible TACs for 1980 and the resultant total 1980 catches under the assumptions of (1) a 60%/40% ratio of US/Canadian quotas; (2) a total 1979 catch of 100,000 mt; and (3) full harvest of the 1980 Canadian quota. The most recent provision of the US/Canadian bilateral negotiations is that the US will receive 60% and Canada 40% of whatever TAC is agreed upon yearly for this species. If, for example, a TAC of 100,000 mt for 1979 were negotiated, the US would, under this provision, receive 60,000 mt as its quota.

Table 1.—*Possible TAC's For 1980, Resultant 1980 Total Catches, And Approximate Resultant Spawning Stock Size in 1981, Under the Assumptions: (1) a 60 percent/40 percent Ratio of United States/Canadian Quotas Within a TAC; (2) Total Catch of 100,000 mt; (3) A United States 1980 Optimum Yield of 30,000 mt; and (4) Full Harvest of the 1980 Canadian Quota.*

[In thousands of metric tons]

1980 TAC	1980 United States quota	1980 United States catch	1980 Canadian quota	1980 total catch (all waters)	Stock size in 1981	Percent change in stock size from 1979	Percent change in stock size from 1980
60	36	30	24	54	552.4	54.3	31.1
80	48	30	32	62	543.8	51.9	29.0
100	60	30	40	70	535.1	49.5	27.0
120	72	30	48	78	526.5	47.1	24.9
140	84	30	56	86	517.9	44.6	22.9
160	96	30	64	94	509.2	42.2	20.8
180	108	30	72	102	500.6	39.8	18.8
200	120	30	80	110	491.9	37.4	16.7
220	132	30	88	118	483.36	35.0	14.7
240	144	30	96	126	474.6	32.6	12.6

The estimated US DAH for mackerel in fishing year 1980–1981 is 20,000 mt (15,000 mt by sport fishermen and 5,000 mt by commercial fishermen). This capacity is above that estimated for 1979 due to an increase in abundance of the species. The capacity of the recreational fishery is considered reasonable in light of the reported 1970 recreational catch of approximately 32,000 mt. On the basis of a limited processor survey recently conducted, the Council cannot justify an increase in DAH or DAP over the 5,000 mt level.

It is the Council's conclusion that the mackerel fishery should be managed so as to increase spawning stock size to a level nearing the estimated average spawning stock size from 1962–1979. The average mackerel spawning stock level during that period was approximately 850,000–900,000 mt. Although the spawning stock size is expected to increase significantly in 1981 (compared to 1979) regardless of relatively large catches in 1979 and 1980 (e.g., 100,000 mt or greater), even relatively small total catches in 1979 and 1980 (e.g., 50,000 mt each year) will yield a spawning stock size in 1981 no greater than about 70% of the average spawning stock size since 1962.

In addition to this consideration, the Council believes that uncertainities regarding (a) the magnitude of mackerel catches in 1979 and 1980 in Canadian waters; (b) the implementation of bilateral management; and (c) the magnitude of negotiated mackerel TACs should bilateral management be instituted, make prudent a precautionary OY for mackerel in U.S. waters, at least in fishing year 1980–1981 and at least until major uncertainities regarding Canadian policy with regard to this responce have been resolved. Given the significant increase in mackerel abundance, however, the Council believes that a significant increase in OY over the fishing year 1979–1980 level should be made for fishing year 1980–1981.

The OY for fishing year 1980–1981 for all Atlantic mackerel under U.S. jurisdiction (the management unit of this FMP) is 30,000 mt. This catch level in fishing year 1980–1981 represents the best present balance between the Council's desires to (a) ensure continued increases in mackerel abundance, and (b) accomodate the full capacities of the U.S. recreational and commercial fisheries to harvest this species. The Council believes that an OY significantly less than this amount will not materially enhance stock rebuilding, regardles of the magnitude of the mackerel catch in Canadian waters in 1979 and 1980, given the most recent and best scientific assessment of the stock. The Council believes an OY significantly in excess of the 30,000 mt level is unjustified in light of the stock rebuilding objective of the FMP. As detailed in Sections XII–2 through XII–4, the surplus of the OY left after DAH is subtracted, 10,000 mt, is not initially allocated entirely to TALFF. Given present uncertainties as to the ultimate DAH for mackerel in fishing year 1980–1981, 6,000 mt of this surplus is placed in a Reserve. Thus, the initial TALFF for mackerel is 4,000 mt.

Table 2.—*MSY, OY, DAH, DAP, NPF, and TALFF (in metric tons)*

Maximum sustainable yield	[1] 210,000
	[1] 230,000
Optimum yield	[2] 30,000
DAH	[2] 20,000
DAP (U.S. commercial harvesting and processing capacity)	[2] 5,000
NPF (U.S. recreational capacity)	[2] 15,000

Table 2.—*MSY, OY, DAH, DAP, NPF, and TALFF (in metric tons)*—Continued

Reserve	[2] 6,000
Total allowable level of foreign fishing	[2] 4,000

[1] Throughout species range.
[2] For the management unit.

Section 301(a) of the Fishery Conservation and Management Act states that: "Any fishery management plan prepared, and any regulation promulgated to implement such plan . . . shall be consistent with the following national standards for fishery conservation and management." The following is a discussion of the standards and how this amended FMP meets them:

"(1) Conservation and management measures shall prevent overfishing while achieving, on a continuous basis, the optimum yield from each fishery." The optimum yield specified in this Amendment is designed to prevent further reductions in mackerel spawning stock size. The provisions of this Amendment constitute a continuation of the program to rebuild the stocks to higher levels of abundance.

"(2) Conservation and management measures shall be based upon the best scientific information available." This Amendment is based on the best and most recent scientific evidence.

"(3) To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination." This Amendment has been designed in anticipation of, and to complement, a possible U.S./Canadian bilateral agreement for the species.

"(4) Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges." Estimates of U.S. capacity for mackerel used in this Amendment include expected catches by all fishermen (sport and commercial) in all affected coastal States. Thus, although mackerel is a migratory species which each year becomes available first to fishermen in more southern States, no closure of this fishery to fishermen in northern Mid-Atlantic or New England States should result from the provisions of this Amendment. In addition, most of the expected increase in domestic commercial catches probably will occur in New England States, which renders remote the likelihood of closure of this fishery prior to arrival of this species in northern waters.

"(5) Conservation and management measures shall, where practicable, promote efficiency in the utilization of the fishery resources; except that no such measure shall have economic allocation as its sole purpose." Since domestic fisheries presently harvest mackerel beneath the OY level, no economic inefficiencies due to surplus investment or fishing effort, or similar considerations, should result from the provisions of this FMP. As U.S. capacity estimates anticipate an increase in commercial fishing for mackerel, this FMP will not create economic inefficiency in domestic commercial fisheries.

"(6) Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches." This FMP and the OY and allocations described herein take into account possible fluctuations in species abundance, expected trends in U.S. demand for mackerel, and the possible effects of Canadian mackerel catches and U.S./Canadian bilateral negotiations as they relate to this species.

"(7) Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication." The management measures outlined in this Amendment are consistent with and complement, but do not duplicate, management measures contained in other FMPs or PMPs. Costs of management should not differ from the costs of the original FMP.

XIII. Measures, Requirements, Conditions, or Restrictions Proposed to Attain Management Objectives

Note.—All references to the Foreign Fishing Regulations are intended to adopt by reference the Foreign Fishing Regulations as they may exist at the time of the adoption of this FMP by the Secretary of Commerce and as they may be amended from time to time following FMP adoption.

XIII–1. Permits and Fees

No changes are proposed as a result of Amendment #1.

XIII–2. Time and Area Restrictions

Foreign nations fishing for mackerel shall be subject to the time and area restrictions set forth in part 611.50 of Title 50 Code of Federal Regulations (CFR).

Fixed Gear Avoidance

Foreign nations fishing for mackerel shall be subject to the fixed gear avoidance regulations set forth in part 611.50(e) of 50 CFR.

XIII–3. Catch Limitations

The fishing year for mackerel shall be the twelve (12) month period beginning April 1.

The annual TALFF for mackerel is 4,000 metric tons.

The US Domestic Annual Harvest (quota) for mackerel is 20,000 metric tons.

A Reserve of 6,000 mt is established.

It is the policy of the Mid-Atlantic Fishery Management Council that the Assistant Administrator for Fisheries, NOAA, be allowed to make an in-season adjustment to the estimated domestic annual harvest (DAH) and Total Allowable Level of Foreign Fishing (TALFF) for mackerel from the Reserve based on the criteria specified by the Council as set forth below. The Council further establishes that any allocation made by the Assistant Administrator in consultation with the Council must be consistent with the objectives of this management plan for the mackerel fishery. An adjustment is a temporary in-season increase of DAH and annual domestic quota and an equivalent temporary in-season decrease of Reserve. These adjustments may be made if actual US landings of mackerel are expected to exceed DAH. A portion of the Reserve not needed to meet actual DAH may be allocated to TALFF. At the end of the fishing year (March 31), DAH, annual domestic quota, and TALFF shall revert to the amounts specified by the Mid-Atlantic Fishery Management Council in Section XII–5 of this FMP.

The Council's criteria to guide the Assistant Administrator in the allocation process are as follows:

The National Marine Fisheries Service (NMFS) shall review reported domestic harvest (including off-loadings at sea) for mackerel on a monthly basis. Domestic harvest shall be determined based upon vessel and processor reports required by Section XIV of this FMP, additional statistical port sampling data collected by NMFS, and surveys of marine angler catches.

The Assistant Administrator shall project the total amount of Atlantic mackerel that will be harvested by US fishermen during the entire fishing year.

If the estimated amount of Atlantic mackerel to be harvested by US fishermen exceeds DAH, the Assistant Administrator shall allocate a sufficient quantity of Atlantic mackerel to DAH from the Reserve. Such allocation shall ensure that the US fishery for Atlantic mackerel will not be subject to closure except in the event that domestic landings of that species threaten to

exceed DAH plus the Reserve for Atlantic mackerel.

At the end of the first six months of the fishing year, if the estimated total amount of Atlantic mackerel to be harvested by US fishermen is less than 80 percent of the total domestic DAH plus the Reserve (i.e., 20,800 mt), the Assistant Administrator shall consider an allocation of the remainder of the Reserve for Atlantic mackerel to TALFF.

Any allocations made under this provision shall be timely, and implemented in a manner which facilitates the conduct of the fishery with a minimum of disruption.

The Assistant Administrator shall accomplish any allocation of mackerel through the regulatory process. Notice of proposed rulemaking stating the amount of Atlantic mackerel to be allocated shall be published in the **Federal Register**. the public shall be given a 15-day comment period from the date of publication. During this time the Assistant Administrator or his designee shall consult with the appropriate committee of the Council to ensure that the proposed allocation is consistent with the objectives contained in the FMP. The Assistant Administrator shall publish final regulations as appropriate in the **Federal Register** to accomplish any allocation. The Council believes these final regulations should be published in the **Federal Register** in a timely manner, to allow for proper notice. When the final regulations are published in the **Federal Register**, all comments and relevant information received including catch statistics shall be summarized.

The Council has determined that it is inappropriate to provide for allocation of the entire Reserve for Atlantic mackerel to TALFF for the following reasons:

(1) The traditional pattern of US harvesting of mackerel throughout the latter part of the fishing year, including the last month of the fishing year.

(2) The unknown amount of incidental catch of mackerel which may be unreported.

(3) The possibility of unforeseen entry into the mackerel fishery by domestic fishermen late in the season.

(4) The development of the mackerel export market.

The Council anticipates that the Secretary, after consultation with the Council, will implement the intent of the FMP to restrict US harvest in excess of DAH plus the Reserve by imposing such measures including, but not limited to, trip limitations, quarterly or half yearly quotas, and closed areas, as she deems appropriate in the final regulations. Such measures should ensure the achievement of OY in a manner that does not result in a sudden dislocation of those involved in the fishery. The Council intends that these measures will enable fishermen to redirect their effort in a timely manner should a closure of the fishery or a substantial diminution in allowable catch become necessary.

XIII–4. Types of Gear

Foreign nations fishing for mackerel shall be subject to the gear restrictions set forth in part 611.50(c) of 50 CFR.

XIII–5. Incidental Catch

Foreign nations fishing for mackerel shall be subject to the incidental catch regulations set forth in parts 611.13, 611.14, and 611.50 of 50 CFR.

XIII–6. Restrictions

No operator of any foreign fishing vessel, including those catching mackerel for use as bait in other directed fisheries, shall conduct a fishery for mackerel outside the areas designated for such fishing operations in this FMP.

XIII–7. Habitat Preservation, Protection and Restoration

The Council is deeply concerned about the effects of marine pollution on fishery resources in the Mid-Atlantic Region. It is mindful of its responsibility under the FCMA to take into account the impact of pollution on fish. The extremely substantial quantity of pollutants which are being introduced into the Atlantic Ocean poses a threat to the continued existence of a viable fishery. In the opinion of the Council, elimination of this threat at the earliest possible time is determined to be necessary and appropriate for the conservation and management of the fishery, and for the achievement of the other objectives of the FCMA as well. The Council, therefore, urges and directs the Secretary to forthwith proceed to take all necessary measures, including but not limited to, the obtaining of judicial decrees in appropriate courts, to abate, without delay, marine pollution emanating from the following sources: (1) the ocean dumping of raw sewage sludge, dredge spoils, and chemical wastes; (2) the discharge of raw sewage into the Hudson river, the New York Harbor, and other areas of the Mid-Atlantic Region; (3) the discharge of primary treated sewage from ocean outfall lines; (4) overflows from combined sanitary and storm sewer systems; and (5) discharges of harmful wastes of any kind, industrial or domestic, into the Hudson River or surrounding marine and estuarine waters.

XIII–8. Development of Fishery Resources

No changes are required as a result of Amendment #1.

XIII–9. Management Costs and Revenues

It is expected that the costs of implementing Amendment #1 should be similar to the cost of implementing the original FMP. The licensing and reporting requirements are essentially unchanged. The monitoring necessary to allocate the Reserve should not result in costs significantly different from the costs of monitoring required in the original FMP to allocate between the US commercial and recreational sectors.

XIV. Specifications and Sources of Pertinent Fishery Data

No changes are required as a result of Amendment #1.

XV. Relationship of the Recommended Measures to Existing Applicable Laws and Policies

XV–1. Fishery Management Plans

Amendment #1 to the Atlantic Mackerel FMP is related to other FMPs, PMPs, and proposed FMPs as follows:

1. It will amend the FMP regulating fishing for mackerel.

2. All fisheries of the northwest Atlantic are part of the same general geophysical, biological, social, and economic setting. Domestic and foreign fishing fleets, fishermen, and gear often are active in more than a single fishery. Thus, regulations implemented to govern harvesting of one species or a group of related species may impact upon other fisheries by causing transfers of fishing effort.

3. Many fisheries of the northwest Atlantic result in significant non-target species fishing mortality. Therefore, each management plan must consider the impact of non-target species fishing mortality on other stocks and as a result of other fisheries.

4. Mackerel are a food item for many commercially and recreationally important fish species. Also, mackerel utilize many finfish species as food items.

5. Present ongoing research programs often provide data on stock size, levels of recruitment, distribution, age, and growth for many species regulated by the PMPs, FMPs, and proposed FMPs.

XV–2. Treaties or International Agreements

No treaties or international agreements, other than GIFAs entered into pursuant to the FCMA, relate to this fishery.

XV–3. Federal Laws and Policies

The only Federal law that controls the fishery covered by this management plan is the FCMA.

Marine Sanctuary and Other Special Management Systems

The USS Monitor Marine Sanctuary was officially established on January 30, 1975, under the Marine Protection, Research, and Sanctuaries Act of 1972. Rules and regulations have been issued for the Sanctuary (15 CFR Part 924). They prohibit deploying any equipment in the Sanctuary, fishing activities which involve "anchoring in any manner, stopping, remaining, or drifting without power at any time" (924.3(a)), and "trawling" (924.3(h)). Although the Sanctuary's position off the coast of North Carolina at 35°00'23" N latitude—75°24'32" W longitude is located in the plan's designated management area, it does not occur within, or in the vicinity of, any foreign fishing area. Therefore, there is no threat to the Sanctuary by allowing foreign mackerel fishing operations under this FMP. Also, the Monitor Marine Sanctuary is clearly designated on all National Ocean Survey (NOS) charts by the caption "protected area". This minimizes the potential for damage to the Sancturary by domestic fishing operations.

Potential Impact on Marine Mammals and Endangered Species

Numerous species of marine mammals occur in the northwest Atlantic Ocean, yet definitive species composition is unknown. Indications are that the most numerous species in the area are the common (saddleback) dolphin (*Delphinus delphis),* harbor porpoise (*Phocoena phocoena),* and harbor seal (*Phoca vitulina).* Data on population abundance for various species, however, is sketchy at best, and for some species is non-existent. In addition, feeding behavior and preference for certain prey species are not well understood. These facts in combination make it extremely difficult to assess, even qualitatively, the potential impact of the mackerel management program on marine mammal populations.

the proposed harvest level for the 1979–1980 fishing year of 11,000 mt is not expected to cause any declines in abundance of this species. Therefore, no change in the availability of these species to those toothed cetaceans and pinnipeds that utilize mackerel as a food item is expected to occur.

Whenever fishing gear and marine mammals occur in the same area, there always exists a potential for an incidental kill of marine mammals. Except in unique situations (e.g., tuna-porpoise in the central Pacific), the incidental kill as a result of commercial fishing activities usually has an insignificant impact upon the stability of marine mammal populations. This is because the number of animals killed is relatively small compared to total population size.

Outside of certain marine mammals, the only threatened/endangered species occurring in the northwest Atlantic are the shortnose sturgeon (*Acipenser brevirostrum)* and several species of sea turtles. Because data on occurrences of shortnose sturgeon are vital to understanding its current status, the Council urges fishermen to report any incidental catch of this species to the Shortnose Sturgeon Recovery Project of the NMFS.

Available data appear to indicate that several species of sea turtles are regularly found in New England waters. These turtles are the Kemp's ridley (*Lepidochelys kempi),* leatherback (*Dermochelys coriacea),* loggerhead (*Caretta caretta),* and green (*Chelonia mydas).* In addition, hawksbill turtles (*Eretmochelys imbricata)* occasionally stray into the area. The Kemp's ridley sea turtle, while probably the most endangered reptile on earth (total population estimated at several thousand adult individuals), is also the most frequently observed sea turtle in New England waters, especially Cape Cod Bay. Strandings of Kemp's ridley are routine, have been known to occur for some time, and result in some mortality to the stranded animals. One hypothesis is that individuals remain in the Bay until late autumn, and with the decrease in water temperature as winter approaches, these animals become subject to hypothermia and subsequently die.

In late autumn, 1978, seven Kemp's ridley turtles were found on the beaches along Cape Cod Bay. While several of these individuals were reportedly cut and bleeding when first observed, recent examination of the preserved specimens did not reveal any major physical damage to the individuals. It is possible that these animals were injured by fishing activity either through entanglement in the trawl nets or by contact with a vessel's propeller. However, there is no solid evidence to indicate that fishing operations were responsible for the kills. Based on inquires to fishermen conducted by NMFS and Massachusetts Division of Marine Fisheries personnel, the general conclusion can be drawn that regular and numerous killings of Kemp's ridley turtles in Cape Cod Bay do not occur as a result of normal commercial fishing operations. Additional monitoring of turtles is needed.

In conclusion, the Council does not believe that implementation of the mackerel FMP will have any adverse impact upon populations of marine mammals and endangered species. As additional understanding of the status and dynamics of marine mammal and sea turtle populations becomes available, the Council will integrate this information into the examination of potential impacts upon the environment as a result of FMPs.

Current and/or Proposed Oil, Gas, Mineral, and Deep Water Port Development

While Outer Continental Shelf (OCS) development plans may involve areas overlapping those contemplated for offshore fishery management, we are unable to specify the relationship of both programs without site specific development information. Certainly, the potential for conflict exists if communication between interests is not maintained or appreciation of each other's efforts is lacking. Potential conflicts include, from a fishery management position: (1) exclusion areas, (2) adverse impacts to sensitive, biologically important areas, (3) oil contamination, (4) substrate hazards to conventional fishing gear, and (5) competition for crews and harbor space. The Council has recommended that the nomination of the Georges Bank Marine Sanctuary be reinstated and that an EIS be prepared for it.

We are not aware of pending deep water port plans which would directly impact offshore fishery management goals in the areas under consideration, nor are we aware of potential effects of offshore fishery management plans upon future development of deep water port facilities.

XV–4. State, Local, and Other Applicable Laws and Policies

No State or local laws control the fisheries that are the subject of this management plan other than those listed in Section VII–4.

State Coastal Zone Management (CZM) Programs

The proposed action entails management of mackerel stocks in an effort to ensure sustained productivity at some optimum level. In order to achieve this goal, all management plans must incorporate means to achieve integrity of fish stocks, related food chains, and habitat necessary for this integrated biological system to function effectively. Inasmuch as CZM plans are presently in

the developmental stages, we are not aware of specific measures on the part of the individual states which would ultimately impact this fishery plan. However, the CZM Act of 1972, as amended, is primarily protective in nature, and provides measures for ensuring stability of productive fishery habitat within the coastal zone. Therefore, each State's CZM plan will probably assimilate the ecological prinicples upon which this particular fishery management plan is based. It is recognized that responsible long-range management of both coastal zones and fish stocks must involve mutually supportive goals. At the time that the draft of Amendment #1 was distributed for review, the Council had been advised that Maine, Massachusetts, Rhode Island, New Jersey, Maryland, and North Carolina had approved CZM Programs. Copies of the draft were sent to the CZM agencies in those States for review and no comments were received.

XVI. Council Review and Monitoring of the Plan

The Council will review the plan each year following the close of the mackerel fishery and the publication of the results of the spring NMFS survey cruse. This schedule will permit a review of MSY, OY, DAH, DAP, NPF and TALFF prior to the development of foreign fishing allocations. This schedule may be modified in the future as the domestic fishery evolves. An additional factor in this evaluation will be the findings of the NMFS marine angler survey.

XVII. References

All requests for background information, biological assessments, etc., should be directed to the offices of the Mid-Atlantic Fishery Management Council. Additions to the references listed in the original FMP are:

Mid-Atlantic Fishery Management Council. 1978. Final environmental impact statement/fishery management plan for the Atlantic mackerel fishery of the northwest Atlantic Ocean, supplement #1. 134 p.

Anderson, E. D. 1979. NMFS, Northeast Fisheries Center, Woods Hole Lab. Lab Reference 79–35.

Appendix I. Status of the Northwest Atlantic Mackerel Stock—1979*

Introduction

This report analyzes the status of the Atlantic mackerel (*Scomber scombrus*) stock distributed throughout ICNAF Subareas 3, 4, and 5 and Statistical Area 6 (SA 3–6) (Figure I–1). This analysis reported herein is an update of the assessment by Anderson and Overholtz (1979a) and utilizes procedures described in Anderson (1979) and Anderson and Overholtz (1979a). Included in this report are international commercial and US recreational catch statistics; US research vessel bottom trawl survey abundance indices; fishing mortality and stock size estimates from cohort analysis; recruitment estimates; and projected options for catch in 1980, given various levels of catch in 1979, with resulting spawning stock biomasses in 1981.

Catch

The international mackerel catch (commercial and recreational) in ICNAF SA 3–6 increased from 12,310 tons in 1960 to 431,606 tons in 1972, and subsequently dropped to only 33,450 tons in 1978 (Table I–1). The US commercial catch has ranged between 938 and 4,364 tons during 1960–1978 and averaged 2,200 tons per year; the 1978 catch was 1,604 tons. Estimated US recreational catches have varied from 522 to 33,303 tons (average of 13,200 tons) and increased sharply from 522 tons in 1977 to 6,571 tons in 1978. Canadian catches during 1960–1978 have varied from 5,459 to 24,444 tons (1978) and averaged 13,400 tons each year. Catches by countries other than the US and Canada increased from 11 tons in 1961 to 396,759 tons in 1973 and decreased to only 831 tons in 1978.

The 1978 catch statistics are presently provisional (Table I–2). The Canadian catch of 24,444 tons comprised 73% of the total, followed by the US with 8,175 tons or 24% (commercial and recreational). A total of 24,913 tons was taken in SA 3–4 and 8,537 tons in SA 5–6. The US imposed a catch limitation for 1978 of 15,500 tons for the portion of the overall stock under US jurisdiction, with only 1,200 tons allocated to distant water fleets as incidental catch in other fisheries. Of this latter amount, only 362 tons were taken; the balance (469 tons) of the distant water fleet catch was taken in SA 4 (Canadian waters).

The estimate of mackerel catch from the US recreational fishery in 1978 was based on a survey of the spring recreational mackerel fishery in the Middle Atlantic area conducted by personnel of the NMFS, Northeast Fisheries Center, Sandy Hook Laboratory, in cooperation with personnel from New Jersey, Delaware, and New York (Christensen et al., 1979a). It was estimated that 6,103 tons were caught by anglers aboard party, charter, and private boats in the area from Virginia to Maine. Assuming that the proportion of mackerel caught from boats compared to that caught from shore was the same in 1978 as estimated in the national marine angler survey conducted in 1970 (Deuel, 1973) (Virginia—New Jersey, 99.6%; New York—Maine, 90.9%), an additional 468 tons were caught by shore-based anglers. The total estimated recreational catch of mackerel in 1978 was, therefore, 6,571 tons.

Catch Composition

The international mackerel catch in numbers at age for 1978 is presented in Table I–3. The bulk of the data are Canadian (calculated by Hunt [1] and Moores [2]), although numbers at age were estimated for portions of the US recreational and commercial catch. There were no sampling data from distant water fleet catches. About 86% of the total catch in tons was accounted for by sampling data (Canada—73%; US—13%). The remaining 14% was assumed to be of the same age composition as the cumulative age composition of the sampled catch.

The 1974 and 1973 year-classes comprised 29% and 22%, respectively, of the total 1978 catch in numbers. The catch of age 1–3 fish was low in comparison to other years. Age 1 (1977 year-class) and age 2 (1976 year-class) fish comprised only 0.2% and 0.4%, respectively, of the 1978 catch, which were the lowest percentage contributions by either age group during 1962–1978. The catch in numbers of age 3 fish (1975 year-class) was 7.6%, the lowest percentage contribution by that age group since the mid-1960s. These unusually poor catches of age 1–3 fish reflect, in large part, the apparent low abundance of these year-classes (1975, 1976, and 1977), and, to a lesser extent, the decrease in distant-water-fleet (DWF) catches. In the past, the percentage contribution of age 1–3 fish was greater in DWF catches than in Canadian and USA catches. Mean age of the catch increased from 2.8 years in 1975 to 3.8 years in 1977 and then climbed sharply to 5.8 years in 1978 (Table I–5), reflecting the passage of the 1973 and 1974 year-classes through the fishery and the scarcity of younger fish in the catch in the last several years.

*Reprinted from: Anderson, E. D., and W. J. Overholtz. 1979., Status of the Northwest Atlantic Mackerel Stock—1979, NMFS, Northeast Fisheries Center, Woods Hole, Lab. Ref. No. 79–35.

[1] Hunt, J. J. Fisheries and Oceans Canada, Fisheries and Marine Service, Marine Fish Division, St. Andrews, New Brunswick E0G 2X0, Canada. personal communication.

[2] Moores, J. A. Fisheries and Oceans Canada, Research and Resource Services, Newfoundland Environment Center, P.O. Box 5667, St. John's, Newfoundland A1C 5X1, Canada. personal communication.

An estimate of the age composition of the 1978 US spring recreational catch of mackerel was made by Christensen et al. (1979b). Approximately half of the catch was comprised of fish from the strong 1967 (age 11–27%) and 1969 (age 9–23%) year-classes (Table I–4). In contrast, only about 6% of the sampled commercial catch consisted of these two year-classes. Furthermore, mackerel catches during a January–March, 1978, USSR bottom trawl survey and the US spring bottom trawl survey indicated low proportions of these older age groups and 50–60% of age 4 (1974 year-class) and 5 (1973 year-class) fish (Anderson and Overholtz, 1978b). Since the survey catches occurred primarily in offshore waters whereas the recreational fishery is conducted generally within 10–15 miles of shore, the difference in catch composition is consistent with what is known about the size and age composition of spring migrating and spawning mackerel. Sette (1943, 1950) reported that the larger, older fish were the first to move inshore to spawn followed later by smaller, younger fish.

Sampling of the spring recreational catch was also done in 1979 (Christensen [3]). Results indicate that the 1969 and 1967 year-classes again comprised about half of the catch (Table I–4). The age composition in 1978 and 1979 is consistent in indicating that the spring recreational catch is comprised mainly of large, old mackerel. Unfortunately, since sampling data were not collected prior to 1978, it is not known if this represents the typical situation or is unique to the last several years. In view of Sette's findings, however, it is likely that this is typical. The summer recreational catch of mackerel in the New England region, although less than that in the spring Middle Atlantic fishery based on past national marine angler survey results, likely includes a greater proportion of smaller fish, particularly when strong year-classes of young fish are present. Although sampling data from this component of the recreational fishery are lacking, young fish are frequently caught from shore in summer (Bigelow and Schroeder, 1953).

The international mackerel catch in numbers at age for 1962–1978 is given in Table I–5.

Mean Weights at Age

Mean weights at age, adopted by scientists in the ICNAF Assessments Subcommittee (ICNAF 1974), were used in this assessment (Table I–6). As described by Anderson (1979), these values were multiplied by the appropriate numbers at age (Table I–5) and summed by calendar year to obtain calculated catches (tons). Ratios between observed and calculated catches varied from 0.906 to 1.302 (Table I–5) and averaged 1.031. Mean weight values were applied to stock size numbers at age calculated from cohort analysis (Table I–10), with the products summed by calendar year to obtain stock biomass. Annual biomass values were corrected using the appropriate observed/calculated catch ratios. Projected catch and stock biomass levels for 1979–1981 were not corrected.

Stock Abundance Indices

US spring and autumn research vessel bottom trawl survey catch-per-tow indices (Table I–7, Figure I–3) have generally monitored trends in mackerel abundance since 1963. Surveys conducted since the previous assessment (Anderson and Overholtz, 1979a) indicate a substantial increase in mean catch per tow (kg, retransformed) during the autumn survey from 0.027 in 1977 to 0.191 in 1978, but a decrease during the spring survey from 0.447 in 1978 to 0.221 in 1979. Year-to-year changes exhibited by survey catch-per-tow indices are much less reliable than longer-term trends due to the high variability of the data (Grosslein, 1971; Anderson, 1976, 1979; Pennington and Grosslein, 1978; Sissenwine, 1978). As a result, the changes in the survey indices in 1978–1979 should be interpreted cautiously. Both the spring and autumn indices increased sharply from 1977 to 1978, but the actual improvement in stock abundance was probably less than either the 2-fold or 6-fold increase indicated by the two surveys, respectively. Results from cohort analysis (Table I–10) indicate the beginning of stock recovery from 1977 to 1978, but the increase was estimated as less than 10%. There is no logical basis for an abrupt change in actual stock size as indicated by the drop in the spring survey index from 1978 to 1979. Available information suggests that the low survey catch of mackerel in 1979 relative to 1978 was due, in part, to warmer bottom water temperatures at the time of the survey in 1979. A greater proportion of the mackerel was caught in sampling strata farther north and east (southern New England–Georges Bank area) in 1979 compared to 1978. It is likely, therefore, that a substantial portion of the mackerel normally sampled in SA 5–6 during the spring survey may, in 1979, have already migrated east and north into Canadian waters enroute to the Gulf of St. Lawrence. Anderson and Almeida (1977) were able to associate northward shifts in spring survey catches of mackerel during 1968–1976 with increases in water temperature.

The standardized US commercial catch-per-day index (Anderson, 1976) decreased slightly from 0.52 tons in 1977 to 0.48 tons in 1978 (Table I–8, Figure I–4). This index has remained fairly constant since 1975. Although this measure of relative stock abundance has generally monitored the gross fluctuations in mackerel abundance since 1964, it is limited as a reliable indicator of year-to-year change, particularly in recent years, since the index is determined from catches which have averaged less than 1% of the total catch from the stock (Anderson, 1979).

Natural Mortality

Instantaneous natural mortality (M) was assumed to be 0.30 for all ages in all years, as adopted earlier by scientists in the ICNAF Assessment Subcommittee (ICNAF 1974).

Fishing Mortality

Instantaneous fishing mortality (F) for fully-recruited age groups in 1978 was estimated using a method first proposed by Anderson et al. (1976) and employed in subsequent assessments. The technique, based on a linear relationship between mean annual F values (ages 3 and older) derived from cohort analysis and relative exploitation indices (ratio between international catch and spring survey catch per tow), predicted an F of 0.153 for 1978 (Table I–9, Figure I–5). In previous assessments (Anderson, 1979; Anderson and Overholtz, 1979a), the 1968–1977 survey values were smoothed by exponential curve and values predicted from the curve were used in calculating the relative exploitation indices. The 1968–77 time-series was smoothed because of the aberrant 1969 value and the year-to-year fluctuations in the other values; an exponential curve appeared to best describe the continuously decreasing trend. Since the 1978 value deviated sufficiently from the decreasing trend of the previous years to reflect a true increase in abundance, the actual 1978 survey value was used to calculate the relative exploitation index for 1978.

Age-specific fishing mortality (F) rates for 1962–1977 (Table I–10) were determined from cohort analysis (Pope, 1972) assuming F=0.153 at ages 4 and older in 1978. Mean annual F values for ages 3 and older increased from 0.04 in 1962–1964 to a high of 0.67 in 1976 and then decreased to 0.34 in 1977 and to an estimated 0.15 (ages 4 and older) in 1978.

[3] Christensen, D. J. NMFS, Northeast Fisheries Center, Sandy Hook Lab., Highlands, NJ 07732. personal communication.

Recruitment

The sizes of the 1961–1974 year-classes at age 1, estimated from cohort analysis, ranged from 433 million (1963 year-class) to 8,417 million fish (1967 year-class) (Table I–10, Figure I–9), with a mean size of 2,138 million and a median size of 1,551 million.

Power curve relationships, fitted by least squares, between (1) autumn survey catch per tow at age 0 (numbers, retransformed), and year-class size at age 1 estimated from cohort analysis for 1963–1974 (Table I–12), Figure I–6), (2) spring survey catch per tow at age 1 and year-class size at age 1 for 1967–1974 (Table I–12, Figure I–7), and (3) spring survey catch per tow at age 2 and year-class size at age 2 for 1966–1974 (Table I–12, figure I–8) were used to estimate the sizes of the 1975–1978 year-classes. Previous assessments (Anderson et al., 1976; Anderson, 1979; Anderson and Overholtz, 1979) utilized linear catch-per-tow indices for ages 0, 1, and 2. The present analysis, however, modified the procedure by using a natural log transformation of the station catches prior to calculation of the catch-per-tow indices, followed by a retransformation to the linear scale. Natural log transformation and retransformation for the catch-per-tow-at-age indices employed the same general procedures (Anderson 1979) as used for the catch-per-tow indices (kg) given in Table I–7. The purpose for and result of this modification to the technique was to reduce some of the variability inherent to the unadjusted linear survey data (Anderson, 1979).

The 1975 year-class was estimated to be 538 and 966 million fish at age 1 based on the autumn (age 0) and spring (age 1) survey catch per tow indices, respectively, and 374 million at age 2 based on the spring age 2 index (Table I–12, Figures I–6—I–8). The catch (C_2) of 26.9 million fish at age 2 in 1977 (Table I–5) and a year-class size (N_2) of 374 million fish implied from:

$$C_2 = N_2 \frac{F_2}{Z_2}(1 - e^{-Z_2}) \quad (1)$$

an F_2 of 0.087. A year-class size of 519 million at age 1 then followed from cohort analysis. Based on three estimates of its size at age 1 (538, 966, and 519 million fish), which averaged 674 million, and considering that two of the three estimates were less than the mean, the 1975 year-class size was assumed to be 600 million at age 1.

Estimates were also obtained similarly for the 1976 year-class at age 1 (0, 416, and 749 million). The zero estimate obtained from the autumn survey age 0 index, although indicative of a poor year class, was not used quantitatively in determining the size of the 1976 year class. The mean of the remaining estimates was 582 million, and, therefore, the 1976 year-class was considered to be 600 million at age 1.

The 1977 year-class was estimated to be 709 and 813 million fish at age 1, based on the autumn (age 0) and spring (age 1) survey catch-per-tow indices, respectively, but only 94 million fish at age 2 based on the spring age 2 index (Table I–12, Figures I–6—I–8). The catch (C_1) of 115,000 fish at age 1 in 1978 (Table I–3) and a year-class size (N_2) of 94 million at age 2 in 1979 implied from

$$\frac{N_2}{C_1} = \frac{Z_1 e^{-Z_1}}{F_1(1 - e^{-Z_1})} \quad (2)$$

an F of 0.00105. A year-class size (N_1) of 126 million at age 1 was then implied from Equation 1. However, in view of the above two estimates of this year-class at age 1 (709 and 813 million), 126 million was considered to be unrealistically low. It was indicated previously that the catch per tow of mackerel during the spring survey decreased from 1978 to 1979 although other evidence indicates that stock abundance improved, and that the decrease was related to increased water temperature which may have stimulated an earlier migration of mackerel from the survey area into Canadian waters. Therefore, the estimate of 126 million fish at age 1 was ignored, and the 1977 year-class was assumed to be 700 million at age 1.

The 1978 year-class was estimated to be 3,342 million fish at age 1 based on the autumn (age 0) survey catch-per-tow index (Table I–12, Figure I–6). Because of the low mackerel catch during the 1979 spring survey, as described earlier, this year-class was estimated to be only 468 million at age 1 based on the spring (age 1) index (Table I–12, Figure I–7). This latter value was considered to be a gross underestimate of the true size of the 1978 year-class. In addition to the results of the 1978 US autumn survey which predicted a large 1978 year-class, results from a bottom trawl survey conducted during 10 February–4 March, 1979, in the Georges Bank—southern New England area by the Federal Republic of Germany R/V *Anton Dohrn* also tend to suggest a large 1978 year-class. The mackerel catch during this survey was larger than that from the last several *Anton Dohrn* spring surveys and consisted almost entirely of 1978 year-class fish. These fish were all caught in stratum 10 (Figure I–2), south of Cape Cod. Since this survey was conducted 1–2 months prior to the US spring survey, it is possible that the bulk of these fish had migrated from the survey area into Canadian waters by the time the US survey sampled the same area.

An attempt was made to correct for the unusually low catch-per-tow index at age 1 in 1979. As mentioned above, the catch-per-tow index at age 2 in 1979 (1977 year-class) predicted a year-class of only 126 million at age 1 compared to estimates of 709 and 813 million at age 1 based on age 0 and 1 survey indices (Table I–11). Assuming that the mean (761 million) of the latter two estimates represented the true size of the year-class at age 1, the catch of 115,000 fish at age 1 in 1978 (Table I–3) implied a year-class size of 564 million at age 2 in 1979, instead of 94 million. The survey catch per tow index at age 2 in 1979 needed to predict 564 million fish from the calculated power curve relationship (Table I–12, Figure I–8) would be 0.229 instead of 0.009. The hypothetical index (0.229) differed from the observed index (0.009) by a factor of 25.44. Assuming that the survey catch of age 1 mackerel in the spring of 1979 was proportionately as low as the catch of age 2 mackerel, increasing the observed age 1 catch per tow index (0.029) by a factor of 25.44 resulted in a hypothetical index of 0.738. A year-class size of 1,555 million fish at age 1 was predicted from the calculated power curve relationship (Table I–12, Figure I–7) using the index of 0.738. Given two estimates of 3,342 million and 1,555 million (average = 2,448 million), the 1978 year-class was, therefore, considered to be 2,400 million fish at age 1.

For purpose of catch and stock size projections and lacking any information, the 1979 year-class was arbitrarily set at 600 million fish at age 1, or equal to the low 1975 and 1976 year-classes.

Based on results of cohort analysis and estimates based on survey catch-per-tow-at-age indices, the 1978 year-class is the largest to enter the fishery since the 1969 year-class (Table I–10), followed by the 1973 year-class. The 1975–1977 year-classes appear to be low in abundance (2–3 times smaller than the 1973–1974 year-classes) and of a size comparable to the 1962–1964 year-classes.

Partial Recruitment

Partial recruitment of an age group to the fishery in a given calendar year is defined here as the ratio of the fishing mortality (F) at that age to the average fishing mortality of fully-recruited ages in that year. Based on age-specific F values from cohort analysis (Table I–11), mackerel appear to have become fully recruited to the fishery in many years by about age 3. Exceptions to this have occurred as a result of the variability in year-class sizes and to shifts in fishing

patterns and effort. Partial recruitment coefficients for ages 1–3 during 1962–1978 are given in Table I–13. Partial recruitment during 1962–1978 has varied from 0.1 to 100.0% (average=29.3%) at age 1, 0.4 to 100.0% (average=48.7%) at age 2, and 7.0 to 100.0% (average=70.9%) at age 3. Partial recruitment was especially high (76%) at age 1 in 1975 (1974 year-class) with 100% recruitment of that year-class at ages 2 and older. The 1973 year-class did not experience high partial recruitment at age 1 (13%), but was fully recruited at ages 2 and older. Full recruitment (at or near 100%) at age 3 occurred in about half of the years (1962–1978), but in 8 of the last 12 years which was the period of the recent intensive international fishery.

Partial recruitment at age 1 decreased sharply from 76% in 1975 to 3.6% in 1976 and continued to drop to only 0.1% in 1978 (Table I–13). Partial recruitment also declined at age 2 from 100% in 1976 to 22% in 1977 and 0.4% in 1978, and at age 3 from 100% in 1977 to 12% in 1978. These coefficients may not be totally accurate as the F values from which they were derived were determined from estimated year-class sizes and known catches. However, the decreases do reflect changing conditions in the mackerel fishery. The abrupt drop in partial recruitment at age 1 in 1976 is due in part to a minimum size limit of 25 cm (total length) adopted beginning that year by ICNAF to effectively exclude the harvest of age 1 mackerel. However, this regulation in itself would not have resulted in such a decrease in fishing mortality relative to older ages, as it authorized up to 25% by number of the total catch on board vessels to be undersized fish. The decreased fishing mortality and partial recruitment evident for the 1975–1977 year-classes in 1976–1978 appears to be due primarily to the low abundance of these year-classes and the fact that the fishery during the last several years has been supported by older fish, particularly the 1973 and 1974 year-classes.

The sudden change in partial recruitment in recent years complicates the selection of coefficients for the projection of catches in 1979 and 1980. Since 73% of the catch in numbers in 1978 was Canadian (Table I–14), and indications are that the bulk of the catch in 1979 and possibly in 1980 will also be Canadian, it was decided to examine the age composition of the Canadian catch and estimate the age-specific fishing mortalities of that component of the international catch. Age composition in thousands of fish at age of the Canadian mackerel catch in SA 3–6 during 1968–1978 is given in Table I–14 (see Anderson and Paciorkowski, in press). These data indicate considerable year-to-year variability in the age composition reflecting in large part the passage of dominant as well as weak year-classes through the fishery. About 50% of the 1968 catch was age 1 fish from the outstanding 1967 year-class; the catch from this year class at ages 1–6 exceeded the catch of any other age group each year through 1973. In 1971 and 1973, small quantities of age 0 mackerel were caught. Until the last several years and the entry of the 1975–1977 year-classes to the fishery, age 1–3 mackerel were well represented in the Canadian catch. Estimates of age-specific fishing mortality attributable to the Canadian fishery were determined by applying the ratio between the Canadian catch in numbers (Table I–14) and the international catch in numbers (Table I–5) at each age in each calendar year to the appropriate F calculated from cohort analysis for the entire fishery (Table I–11). From this analysis it appeared, as for the entire fishery, that fish in most years were fully recruited to the Canadian fishery at age 3. Partial recruitment coefficients were determined for ages 1–3 as ratios of F at each age to the mean F (F at each age weighted by stock size at that age) at ages 3 and older (Table I–14). As with the partial recruitment coefficients determined for the entire fishery (Table I–12), the Canadian values exhibited considerable variation and the same general year-to-year pattern, although, on average for 1968–1978, they were lower at each age (18% vs. 20% at age 1; 33% vs. 50% at age 2; 67% vs. 81% at age 3). The 1978 values for both the Canadian and the entire fishery were low at ages 1–3 (0.1, 0.4, and 12%, respectively). With an estimated strong 1978 year-class entering the fishery in 1979 and the 1974 and older year-classes continuing to decline in abundance as they advance through the fishery, it was felt that partial recruitment coefficients at ages 1–3 fish in 1979–1980 would increase from those estimated for 1978. Lacking any additional rationale for selecting coefficients for 1979–1980, means for each age were determined by eliminating from consideration the high and low values at each age in the 1968–1978 series. The resulting values were 15% at age 1, 33% at age 2, and 70% at age 3, with full or 100% recruitment at ages 4 and older (Table I–16).

Stock Size

Age-specific stock size estimates generated from cohort analysis and annual biomass values obtained by applying mean weights at age (Table I–6) to the stock size estimates are given in Table I–10. Total stock biomass (ages 1 and older) increased from about 600,000 tons during 1962–1965 to 2.5 million tons in 1969 (Figure I–9) and then declined sharply to 485,000 tons at the beginning of 1977. The total stock has since increased about 30% to an estimated 631,000 tons at the beginning of 1979. Spawning stock biomass, defined as 50% of the age 2 fish and 100% of the age 3 and older fish, increased from about 500,000 tons in 1962–1967 to 1.9 million tons in 1970–1972 and then declined to an estimated 358,000 tons at the beginning of 1979.

Catch and Stock Size Projections

Projections of spawning stock biomass available at the beginning of 1980 were made assuming various levels of catch in 1979 ranging from 30,000 to 100,000 tons (Table I–17). Fishing mortality estimated to generate these catches varied between 0.103 (30,000 tons) and 0.380 (100,000 tons). Spawning stock biomass available at the beginning of 1980 will vary from an estimated 488,000 tons (36% increase from 1979) assuming a 1979 catch of 30,000 tons, to 421,000 tons (18% increase from 1979), assuming a catch of 100,000 tons.

Projected catches in 1980 at fishing mortality rates ranging from 0.05 to 0.50 and resultant spawning stock biomass levels available at the beginning of 1981 were made (Table I–18) for each 1979 catch option. If the 1979 catch was only 30,000 tons, or about the same level as in 1978, catches in 1980 would vary from 17,600 tons at F=0.05 to 150,700 tons at F=0.50. Resultant spawning stock biomass at the beginning of 1981, given this range in catch in 1980, would vary from 657,000 tons (84% increase from 1979 and 35% increase from 1980) to 515,000 tons (44% increase from 1979 and 6% increase from 1980).

If the 1979 catch was as high as 100,000 tons, catches in 1980 would vary from 15,000 tons at F=0.50. Resultant spawning stock biomass in 1981, givern this range in catch in 1980, would vary from 595,000 tons (66% increase from 1979 and 41% increase from 1980) to 472,000 tons (32% increase from 1979 and 12% increase from 1980).

Given the range in catch in 1979 from 30,000 to 100,000 tons, fishing in 1980 at $F_{0.1}$=0.40 would result in catches ranging from 124,600 to 106,500 tons and result in spawning stock biomass increases of 52%–38% from 1979 to 1981 and of 11% to 18% from 1980 to 1981.

Under all catch assumptions presented for 1979–1980, there is an accompanying projection of stock increase in 1980–1981, which is due to the recruitment of the estimated strong 1978 year-class. Continued recovery of

the stock will depend largely on the strength of this and subsequent year-classes as well as the magnitude of the catch in the next few years. There is no definite basis for predicting levels of future recruitment given present and projected levels of spawning biomass. However, examination of the 1962–1978 spawning stock-recruitment pattern indicates a greater probability of stronger recruitment with a spawning stock biomass in excess of 700,000 tons. During the 17-year period of 1962–1978, the estimated spawning biomass was less than 700,000 tons during 8 of those years, and only 25% (2) of the year-classes spawned during those 8 years were above median size. During the remaining 9 years, spawning biomass was equal to or greater than 900,000 tons and 78% (7) of the year-classes were at or above the median size. Since all of the years which resulted in good recruitment were consecutive, it is possible that favorable environmental conditions may have persisted during that time which were equally or more influential in determinig year-class size than spawning stock size. The available knowledge is not sufficient to distinguish the key factor(s), but does suggest a higher probability of improved recruitment as the stock continues to rebuild.

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Table I-1. Mackerel Catch (tons) from SA 3-6 During 1960-1978.

Year	United States		Canada	Other Countries	Total
	Commercial	Recreational			
1960	1,396	4,957(a)	5,957	-	12,310
1961	1,361	6,828	5,459	11	13,659
1962	938	8,698	6,801	175	16,612
1963	1,320	8,348	6,363	1,299	17,330
1964	1,644	8,486	10,786	801	21,717
1965	1,998	8,583(a)	11,185	2,945	24,711
1966	2,724	10,172	11,577	7,951	32,424
1967	3,891	13,527	11,181	19,047	47,646
1968	3,929	29,130	11,134	65,747	109,940
1969	4,364	33,303	13,257	114,189	165,113
1970	4,049	32,078(a)	15,690	210,864	262,681
1971	2,406	30,642	14,735	355,892	403,675
1972	2,006	21,882	16,254	391,464	431,606
1973	1,336	9,944	21,247	396,759	429,286
1974	1,042	7,640(a)	16,701	321,837	347,220
1975	1,974	5,968	13,544	271,719	293,205
1976	2,712	4,202(a)	13,746	223,275	245,935
1977	1,376	522(a)	22,477(b)	53,745(b)	78,120
1978	1,604	6,571(a)	24,444(b)	831(b)	33,450

(a) From angler survey; remaining years estimated (see Anderson, 1977)

(b) Provisional.

Table I-2. Provisional Mackerel Catch in 1978 by Country from SA 3-6 (tons)

Country	Total
Bulgaria	30
Canada	24,444
Cuba	18
Italy	64
Japan	13
Mexico	1
Poland	2
Romania	20
Spain	28
USSR	655
US (commercial)	1,604
US (recreational)	6,571
TOTAL	33,450

Table I-3. Age Composition (thousands of fish at age) of 1978 Commercial and Recreational Catch of Mackerel in SA 3-6

	Sampled Catch						
	Canada		US Rec.	US Commercial			
Age	SA 3	SA 4	SA 6	Div 5Y (Jun-Jul)	Subdiv 5Zw (Apr)	Total	Grand Total[1]
1	-	2.0	-	96.8	-	98.8	115.3
2	-	174.7	8.5	24.3	2.8	210.3	245.4
3	1,087.9	2,595.0	188.8	82.1	6.1	3,959.9	4,620.6
4	6,025.7	8,135.7	611.6	148.2	20.0	14,941.2	17,434.1
5	6,381.9	4,745.2	442.5	25.0	10.9	11,605.5	13,541.8
6	4,044.3	2,068.1	938.5	27.8	3.2	7,081.9	8,253.5
7	2,053.8	981.3	789.1	-	1.4	3,825.6	4,463.9
8	865.1	791.5	225.5	-	0.3	1,810.4	2,112.5
9	459.4	888.6	1,789.6	18.6	1.5	3,157.7	3,684.6
10	671.7	383.1	188.8	8.8	-	1,252.4	1,461.4
11+	1,119.4	225.3	2,646.3	3.8	1.7	4,001.5	4,669.1
TOTAL	22,709.2	20,918.5	7,829.2	440.4	47.9	51,945.2	60,612.2
TONS	13,630	10,814	4,032	171	20	28,667	33,450

[1] Total numbers at age from sampled catch raised to include unsampled catch.

Unsampled catch distributed as follows:

US (rec) SA 5-6	2,539 tons
US (comm) SA 5-6	1,413
Others SA 4-6	831
Total	4,783

Table I-4. Percentage Age Composition of US Recreational Mackerel Catch in the Middle Atlantic Area in 1978-1979.

	Year	
Age	1978	1979
1	-	-
2	0.1	0.2
3	2.4	0.2
4	7.7	0.5
5	5.6	5.7
6	12.0	1.7
7	10.1	5.2
8	2.9	3.5
9	22.9	8.3
10	2.4	30.5
11	26.8	7.2
12	3.4	20.7
13+	3.7	16.3

Table I-5

Year	AGE 0	1	2	3	4	5	6	7	8	9	10	11+	Total	Observed Weight[a]	Calculated Weight[a,b]	Observed Calculated	Mean Age
1962	-	23.3	4.0	22.1	5.5	1.7	2.3	2.1	1.1	0.6	0.2	0.4	63.3	16.6	15.3	1.085	2.8
1963	-	1.5	5.6	1.7	35.2	8.1	0.4	0.2	0.2	0.2	0.2	0.2	53.5	17.3	18.2	0.951	3.9
1964	-	15.9	8.6	5.1	4.9	24.0	5.1	4.8	0.8	1.0	0.3	-	70.5	21.7	23.1	0.939	3.8
1965	-	10.9	4.3	3.5	4.9	6.3	23.6	5.1	4.8	0.9	-	-	64.3	24.7	25.5	0.969	4.7
1966	-	29.0	13.9	6.4	3.2	5.7	9.6	26.4	0.6	0.2	-	-	95.0	32.4	30.7	1.055	3.9
1967	2.2	1.0	33.0	24.4	4.3	4.1	6.3	7.5	39.8	0.4	-	-	123.0	47.6	48.0	0.992	4.8
1968	1.4	175.5	76.3	73.6	47.3	17.8	8.2	0.8	1.2	7.6	0.1	-	409.8	109.9	84.0	1.302	2.3
1969	4.5	8.1	298.8	183.2	75.0	6.5	3.4	2.3	3.5	2.5	9.5	-	597.3	165.1	144.7	1.141	2.8
1970	5.1	206.1	58.1	556.0	173.5	29.4	7.5	5.6	10.5	10.6	4.0	3.0	1069.4	262.7	276.8	0.949	3.0
1971	2.5	77.3	304.8	132.0	579.0	210.8	35.8	9.2	3.7	4.4	8.4	7.5	1375.4	403.7	429.2	0.941	3.6
1972	3.6	22.4	87.0	260.0	185.3	396.2	88.6	24.4	4.3	8.3	3.8	5.7	1089.6	431.6	396.2	1.089	4.2
1973	4.0	161.4	282.4	284.3	233.0	191.9	196.7	31.1	10.9	4.1	3.8	1.6	1405.2	429.3	435.4	0.986	3.6
1974	2.0	95.9	242.2	264.4	101.5	114.3	111.8	108.3	25.7	6.4	2.5	0.8	1075.8	347.2	346.9	1.001	3.8
1975	3.7	374.7	432.6	114.0	101.1	58.8	68.0	52.0	50.6	12.5	2.3	1.0	1271.3	293.2	308.1	0.952	2.8
1976	-	12.5	353.5	272.5	85.2	52.4	27.3	40.5	34.6	22.6	13.4	1.4	916.4	245.9	271.3	0.906	3.5
1977	-	2.0	26.9	100.7	53.9	11.9	9.9	5.6	6.3	3.8	3.6	0.6	225.2	78.1	73.1	1.068	3.8
1978	-	0.1	0.2	4.6	17.4	13.5	8.3	4.5	2.1	3.7	1.5	4.7	60.6	33.4	28.0	1.193	5.8

(a) Thousands of metric tons

(b) Using mean weights at age from Table I-6

Atlantic Mackerel Commercial And Recreational Catch At Age (Millions Of Fish)
From ICNAF Subareas 3 - 5 And Statistical Area 6 During 1962 - 1978

Table I-6. Mean Weights at Age (kg) of Atlantic Mackerel (from ICNAF, 1974)

Age									
1	2	3	4	5	6	7	8	9	10+
.095	.175	.266	.350	.432	.506	.564	.615	.659	.693

Table I-7. Stratified Mean Catch (kg) per tow (linear, ln, and retransformed) of Mackerel from US Bottom Trawl Surveys in the Spring (strata 1-25, 61-76) and Autumn (strata 1-2, 5-6, 9-10, 13, 16, 19-21, 23, 25-26) (see Figure 2 for location of sampling strata)

	Spring[1]			Autumn[2]		
Year	Linear	Ln	Retransformed	Linear	Ln	Retransformed
1963	-	-	-	.016	.013	.016
1964	-	-	-	<.001	<.001	<.001
1965	-	-	-	.089	.046	.073
1966	-	-	-	.098	.057	.085
1967	-	-	-	.740	.195	.372
1968	18.228	.575	3.998	.299	.117	.217
1969	.177	.029	.065	2.592	.154	.459
1970	7.138	.471	2.039	.110	.068	.099
1971	10.213	.425	1.969	.082	.052	.073
1972	5.012	.354	1.332	.126	.070	.107
1973	21.901	.228	.748	.045	.034	.043
1974	2.103	.277	.769	.205	.046	.108
1975	.500	.121	.225	.018	.010	.016
1976	.823	.144	.317	.043	.028	.039
1977	.266	.118	.199	.029	.020	.027
1978	1.125	.181	.447	.306	.104	.191
1979	.288	.117	.221	-	-	-

[1] Based on catches with No. 41 trawl; 1968-1972 catches were with No. 36 trawl and were adjusted to equivalent No. 41 catches using a 3.25:1 ratio (41/36).

[2] Based on catches with No. 36 trawl.

Table I-8. Mackerel Catch per Standardized US Day Fished (tons)

Year	Catch Per Day
1964	0.43
1965	0.49
1966	0.84
1967	1.75
1968	2.80
1969	1.92
1970	2.07
1971	1.29
1972	0.84
1973	0.53
1974	0.17
1975	0.53
1976	0.59
1977	0.52
1978	0.48

Table I-9. Estimation of Fishing Mortality (F) in 1978 for the SA 3-6 Mackerel fishery

Year	Spring Survey Catch Per Tow (a)	Catch (tons)(b)	Relative Exploitation Index (c)	Mean F (d) Age 3+
1968	4.518	109,940	24,334	.152
1969	3.199	165,113	51,614	.142
1970	2.265	262,681	115,974	.173
1971	1.604	403,675	251,668	.251
1972	1.135	431,606	380,270	.291
1973	.804	429,286	533,938	.426
1974	.569	347,220	610,228	.468
1975	.403	293,205	727,556	.437
1976	.285	245,935	862,930	.673
1977	.202	78,120	386,733	(.330)(e,f)
1978	.447	33,450	74,832	(.153)(e)

(a) Stratified mean catch (kg) per tow indices for 1968-77 smoothed by exponential curve (see Anderson, 1979); 1978 is actual value.

(b) International commercial and recreational catch.

(c) Ratio between catch and survey catch per tow.

(d) Obtained from cohort analysis assuming F = 0.153 in 1978.

(e) Calculated from regression of relative exploitation index on mean F for 1968-76: $Y = 0.110 + 0.000000568\ X$, $r = 0.970$.

(f) Actual value calculated from cohort analysis was 0.337.

Year-Class	YEAR 1962	1963	1964	1965	1966	1967	1968	1969	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979
1951	12.7	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
1952	7.6	5.5	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
1953	8.1	5.5	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
1954	18.1	12.5	9.1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
1955	57.8	41.0	30.2	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
1956	56.1	39.6	29.2	20.9	-	-	-	-	-	-	-	-	-	-	-	-	-	-
1957	40.1	28.2	20.6	11.1	4.1	-	-	-	-	-	-	-	-	-	-	-	-	-
1958	53.8	35.1	19.1	9.7	2.8	1.6	0.8	-	-	-	-	-	-	-	-	-	-	-
1959	891.7	641.5	445.0	309.0	208.6	131.8	63.4	40.4	21.8	-	-	-	-	-	-	-	-	-
1960	773.5	569.5	420.5	307.3	222.2	156.4	109.4	80.0	57.1	38.9	-	-	-	-	-	-	-	-
1961	956.3	688.4	505.2	369.8	269.8	194.9	139.0	102.3	72.8	44.8	25.9	-	-	-	-	-	-	-
1962	-	434.2	320.4	230.0	167.3	121.2	86.3	56.9	40.1	20.7	11.5	5.3	-	-	-	-	-	-
1963	-	-	433.1	307.1	223.8	160.3	115.1	69.9	48.9	31.4	20.1	7.7	2.4	-	-	-	-	-
1964	-	-	-	551.6	399.2	283.8	189.2	99.5	68.1	44.0	24.7	14.6	7.3	3.2	-	-	-	-
1965	-	-	-	-	1217.4	876.9	621.2	396.9	229.5	144.7	76.4	35.6	17.0	7.1	3.3	-	-	-
1966	-	-	-	-	-	3181.5	2356.0	1679.7	1086.7	655.7	304.3	149.2	83.8	39.9	18.8	2.4	-	-
1967	-	-	-	-	-	-	8416.9	6084.3	4250.2	2670.1	1479.7	755.2	390.1	195.8	101.5	55.7	38.2	-
1968	-	-	-	-	-	-	-	3155.7	2330.8	1676.7	1128.5	676.5	336.0	152.7	68.4	20.9	12.2	32.0
1969	-	-	-	-	-	-	-	-	3404.6	2344.8	1474.7	868.7	443.2	229.8	111.7	47.9	30.1	19.1
1970	-	-	-	-	-	-	-	-	-	1550.9	1082.4	727.0	293.9	130.3	46.0	10.5	3.0	1.9
1971	-	-	-	-	-	-	-	-	-	-	1792.5	1308.6	726.4	310.6	143.1	60.9	36.6	23.3
1972	-	-	-	-	-	-	-	-	-	-	-	1401.8	899.6	458.0	241.2	104.9	67.5	42.9
1973	-	-	-	-	-	-	-	-	-	-	-	-	1885.1	1314.0	601.1	210.7	109.7	69.7
1974	-	-	-	-	-	-	-	-	-	-	-	-	-	1550.8	826.3	307.9	141.4	89.9
1975	-	-	-	-	-	-	-	-	-	-	-	-	-	-	a(600.0)	433.8	298.4	217.1
1976	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	a(600.0)	442.8	327.9
1977	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	a(700.0)	518.5
1978	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	a(2400.0)
Stock size (age 1+)																		
Total (10^6)																		
	2875.8	2501.0	2232.4	2116.5	2715.2	5108.4	12097.3	11765.6	11610.6	9222.7	7420.7	5950.2	5084.8	4392.2	2761.4	1855.6	1379.9	3742.3
Weight (10^3 tons)(b)																		
	641.3	599.7	597.6	593.0	690.7	901.3	2245.6	2515.1	2401.7	2268.2	2219.0	1635.4	1284.8	971.4	650.8	485.0	515.0	631.3
Spawning stock size (50% age 2, 100% age 3+)																		
Total (10^6)																		
	1532.8	1722.6	1639.1	1411.4	1298.2	1488.5	2502.4	5567.8	7040.6	6499.4	5086.7	3894.1	2749.9	2184.4	1748.3	1038.7	958.5	1083.0
Weight (10^3 tons)(b)																		
	469.3	503.2	532.7	516.1	531.8	525.4	936.2	1565.6	1901.2	1936.5	1930.4	1391.2	1026.8	721.7	533.6	383.6	389.4	357.9

(a) Estimated

(b) Adjusted using observed/calculated catch ratios in Table I-5

Table I-10

Mackerel Stock Size By Age In ICNAF Subareas 3 - 5 And Statistical Area 6 (Millions Of Fish)
Derived From Cohort Analysis Assuming M = 0.30 And F = 0.153 At Ages 4 And Older In 1978

YEAR

Year-Class	1962	1963	1964	1965	1966	1967	1968	1969	1970	1971	1972	1973	1974	1975	1976	1977	1978
1951	(.037)[b]	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
1952	.031	(.043)[b]	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
1953	.090	(.043)[b]	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
1954	.073	.019	(.039)[b]	-	-	-	-	-	-	-	-	-	-	-	-	-	-
1955	.043	.006	(.039)[b]	-	-	-	-	-	-	-	-	-	-	-	-	-	-
1956	.049	.006	.032	(.051)[b]	-	-	-	-	-	-	-	-	-	-	-	-	-
1957	.051	.017	.316	.697	(.058)[b]	-	-	-	-	-	-	-	-	-	-	-	-
1958	.126	.312	.373	.940	.285	.351	(.152)[b]	-	-	-	-	-	-	-	-	-	-
1959	.029	.066	.065	.093	.159	.432	.150	.319	(.173)[b]	-	-	-	-	-	-	-	-
1960	.006	.003	.014	.024	.051	.057	.013	.037	.035	(.251)[b]	-	-	-	-	-	-	-
1961	.029	.009	.012	.016	.025	.038	.007	.041	.185	.246	(.291)[b]	-	-	-	-	-	-
1962	-	.004	.032	.018	.022	.040	.117	.048	.362	.284	.482	(.426)[b]	-	-	-	-	-
1963	-	-	.044	.016	.034	.032	.198	.058	.143	.147	.655	.848	(.468)[b]	-	-	-	-
1964	-	-	-	.023	.041	.105	.343	.079	.137	.278	.226	.396	.510	(.437)[b]	-	-	-
1965	-	-	-	-	.028	.045	.148	.248	.161	.339	.464	.440	.576	.475	(.673)[b]	-	-
1966	-	-	-	-	-	<.001	.038	.135	.205	.468	.413	.277	.441	.452	1.756	(.337)[b]	-
1967	-	-	-	-	-	-	.025	.059	.165	.290	.373	.360	.389	.357	.299	.078	.153
1968	-	-	-	-	-	-	-	.003	.029	.096	.212	.400	.489	.504	.887	.238	.153
1969	-	-	-	-	-	-	-	-	.073	.164	.229	.373	.356	.421	.547	.166	.153
1970	-	-	-	-	-	-	-	-	-	.060	.098	.606	.513	.743	1.172	.960	.153
1971	-	-	-	-	-	-	-	-	-	-	.015	.289	.550	.475	.554	.209	.153
1972	-	-	-	-	-	-	-	-	-	-	-	.144	.375	.341	.533	.141	.153
1973	-	-	-	-	-	-	-	-	-	-	-	-	.061	.482	.748	.353	.153
1974	-	-	-	-	-	-	-	-	-	-	-	-	-	.330	.687	.478	.153
1975	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(.024)[c]	(0.74)[c]	(.018)[c]
1976	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(.004)[c]	(.001)[c]
1977	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(<.001)[c]
$\bar{F}$ (age 3+)	.037	.043	.039	.051	.058	.084	.152	.142	.173	.251	.291	.426	.468	.437	.673	.337	.153[d]

(a) Mean F for ages 3 and older weighted by stock size at age.
(b) Mean F for ages 3 and older in that year.
(c) Determined from estimated stock size and known catch.
(d) Ages 4 and older.

Table I-11

Fishing Mortality Rates (F) For Mackerel In ICNAF Subareas 3 - 5 And Statistical Area 6

Derived From Cohort Analysis Assuming M = 0.30

Table I-12. Stratified Mean Catch per Tow (number) at Age 0, 1, and 2 Mackerel from US Autumn and Spring Bottom Trawl Surveys and Year-Class Sizes at Ages 1 and 2 from Cohort Analysis Assuming F = 0.153 at Ages 4 and Older in 1978

Year-Class	Autumn Survey Age 0	Spring Survey Age 1	Spring Survey Age 2	Cohort Analysis Age 1	Cohort Analysis Age 2
1963	0.080	-	-	433.1	307.1
1964	0.021	-	-	551.6	399.2
1965	0.114	-	-	1,217.4	876.9
1966	0.158	-	1.726	3,181.5	2,356.0
1967	1.833	40.240	0.198(a)	8,416.9	6,084.3
1968	0.095	0.238(a)	2.625	3,155.7	2,330.8
1969	0.690	1.010	2.779	3,404.6	2,344.8
1970	0.023	0.929	1.368	1,550.9	1,082.4
1971	0.169	1.894	0.787	1,792.5	1,308.6
1972	0.085	0.915	0.383	1,401.8	899.6
1973	0.214	0.826	1.277	1,885.1	1,314.0
1974	0.141	3.186	0.787	1,550.8	826.3
1975	0.012	0.204	0.109	(538.5)(b) (965.8)(c)	(373.6)(d)
1976	0.000	0.021	0.221	(0.0)(b) (415.9)(c)	(553.0)(d)
1977	0.021	0.128	0.009	(709.2)(b) (812.6)(c)	(93.6)(d)
1978	0.490	0.029	-	(3,341.8)(b) (468.0)(c)	-

(a) Values not used in calculating curves.

(b) Calculated from power curve relationship between survey catch per tow at age 0 and year-class size at age 1 for 1963-74 year-classes: $\ln Y = \ln 4747.251 + 0.492 \ln X$, $r = 0.761$.

(c) Calculated from power curve relationship between survey catch per tow at age 1 and year-class size at age 1 for 1967-74 year-classes: $\ln Y = \ln 1740.750 + 0.371 \ln X$, $r = 0.801$.

(d) Calculated from power curve relationship between survey catch per tow at age 2 and year-class size at age 2 for 1966-74 year-classes: $\ln Y = \ln 1278.129 + 0.555 \ln X$, $r = 0.847$

Table I-13. Percentage of Fishing Mortality (f) at Ages 1, 2, and 3 Compared to Mean F at Ages 3 and Older (partial recruitment) for the International Mackerel Fishery in SA 3-6

Year	Age 1	Age 2	Age 3
1962	78.4	16.2	78.4
1963	9.3	20.9	7.0
1964	100.0	82.1	30.8
1965	45.1	31.4	35.3
1966	48.3	70.7	58.6
1967	0.4	53.6	100.0
1968	16.4	25.0	97.4
1969	2.1	41.5	95.1
1970	42.2	16.8	95.4
1971	23.9	65.3	38.2
1972	5.2	33.7	78.7
1973	33.8	67.8	100.0
1974	13.0	80.1	100.0
1975	75.5	100.0	78.0
1976	3.6	100.0	100.0
1977	1.2	22.0	100.0
1978(a)	0.1	0.4	11.8

(a) F at ages 1-3 compared to mean F at ages 4 and older.

Table I-14. Age Composition (thousands of fish at age) of Canadian Mackerel Catch in SA 3-6 during 1968-78

Age	1968	1969	1970	1971	1972	1973	1974	1975	1976	1977	1978
0	-	-	-	909	-	250	-	-	-	-	-
1	22,991	4,049	15,146	4,305	-	5,051	3,223	5,306	803	714	2
2	3,821	18,751	2,730	4,445	99	11,351	9,103	9,302	10,082	6,892	175
3	5,522	12,845	25,085	1,024	3,199	5,311	9,987	4,874	12,910	21,793	3,683
4	3,947	1,442	6,010	21,613	4,028	5,137	5,461	4,346	5,230	10,930	14,162
5	1,505	661	1,865	4,584	18,046	7,690	4,710	2,634	3,686	3,557	11,127
6	720	608	337	1,054	3,616	12,270	4,644	2,811	1,842	2,481	6,112
7	385	782	318	1,325	3,815	4,578	5,751	2,038	2,344	732	3,035
8	885	313	1,178	918	56	1,525	1,516	1,463	1,894	1,393	1,585
9	5,566	329	1,228	1,130	397	461	641	308	1,487	867	1,348
10	52	6,869	870	597	2	369	315	121	340	1,329	1,055
11+	-	-	2,368	2,722	4,965	514	339	96	215	333	1,345
otal	45,394	46,649	57,135	44,626	38,223	54,507	45,690	33,299	40,833	51,071	43,629
ons	11,134	13,257	15,690	14,735	16,254	21,247	16,701	13,544	15,746	22,477	24,444
of otal atch	10.1	8.0	6.0	3.7	3.8	4.9	4.8	4.6	6.4	28.8	73.1

Table I-15. Percentage of Fishing Mortality (F) at Ages 1, 2, and 3 Compared to Mean F at Ages 3 and Older (partial recruitment) for the Canadian Mackerel Fishery in SA 3-5 During 1968-78

Year	Age 1	Age 2	Age 3
1968	16.7	11.1	61.1
1969	12.5	50.0	100.0
1670	62.5	12.5	87.5
1971	33.3	22.2	11.1
1972	0.0	1.0	30.0
1973	31.3	75.0	68.8
1974	8.0	56.0	84.0
1975	27.8	55.6	83.3
1976	5.6	55.6	97.2
1977	1.4	25.7	100.0
1978(a)	<0.1	0.4	12.8

(a) F at ages 1-3 compared to mean F at ages 4 and older.

Table I-16. Summary of Parameters Used in Projection of Catch and Stock Size Options for Mackerel in SA 3-6

Parameter		Value
Fishing mortality (F) in 1978 (ages 4 and older)		0.153
Recruitment at age 1:	1975 year-class	600 X 10^6 fish
	1976 year-class	600 X 10^6 fish
	1977 year-class	700 X 10^6 fish
	1978 year-class	2,400 X 10^6 fish
	1979 year-class	600 X 10^6 fish
Partial recruitment in 1979-1980:	Age 1	15%
	Age 2	33%
	Age 3	70%
	Ages 4 & older	100%
Total stock biomass at beginning of 1979		631,300 tons
Spawning stock biomass at beginning of 1979		357,900 tons

Table I-17. Various Levels of Catch of Mackerel in SA 3-6 in 1979 and Associated fishing Mortality at Ages 4 and Older with Resulting Spawning Stock Biomass in 1980 and its Percentage Cahnge from 1979. Catch and Stock are Expressed in thousands of Tons.

Stock in 1979	Catch in 1979	F in 1979	Stock in 1980	% Change in Stock from 1979
357.9	30.0	0.103	488.0	+36.4
357.9	40.0	0.139	478.5	+33.7
357.9	50.0	0.176	468.9	+31.0
357.9	60.0	0.215	459.3	+28.3
357.9	70.0	0.254	449.8	+25.7
357.9	80.0	0.295	440.3	+23.0
357.9	90.0	0.337	430.8	+20.4
357.9	100.0	0.380	421.3	+17.7

1979 Catch = 30.0

F	Catch In 80	Stock In 81	% Change In Stock From 79	% Change In Stock From 80
0.05	17.6	657.0	+83.6	+34.6
0.10	34.6	638.9	+78.5	+30.9
0.15	50.9	621.5	+73.6	+27.3
0.20	66.7	604.6	+68.9	+23.9
0.25	82.0	582.3	+64.4	+23.6
0.30	96.7	572.6	+60.0	+17.3
0.35	110.9	557.5	+55.8	+14.2
0.40	124.6	542.9	+51.7	+11.2
0.45	137.9	528.8	+47.7	+ 8.4
0.50	150.7	515.1	+43.9	+ 5.6

1979 Catch = 40.0

F	Catch In 80	Stock In 81	% Change In Stock From 79	% Change In Stock From 80
0.05	17.2	648.2	+81.1	+35.5
0.10	33.8	630.4	+76.2	+31.8
0.15	49.9	613.3	+71.4	+28.2
0.20	65.3	596.8	+66.7	+24.7
0.25	80.2	580.8	+62.3	+21.4
0.30	94.6	565.4	+58.0	+18.2
0.35	108.6	550.6	+53.8	+15.1
0.40	122.0	536.2	+49.8	+12.1
0.45	135.0	522.4	+46.0	+ 9.2
0.50	147.5	509.0	+42.2	+ 6.4

1979 Catch = 50.0

F	Catch In 80	Stock In 81	% Change In Stock From 79	% Change In Stock From 80
0.05	16.8	639.3	+78.6	+36.3
0.10	33.1	621.9	+73.8	+32.6
0.15	48.8	605.1	+69.1	+29.1
0.20	63.9	588.9	+64.6	+25.6
0.25	78.5	573.3	+60.2	+22.3
0.30	92.6	558.2	+56.0	+19.0
0.35	106.2	543.6	+51.9	+15.9
0.40	119.4	529.5	+48.0	+12.9
0.45	132.1	515.9	+44.2	+10.0
0.50	144.4	502.8	+40.5	+ 7.2

1979 Catch = 60.0

F	Catch In 80	Stock In 81	% Change In Stock From 79	% Change In Stock From 80
0.05	16.6	630.4	+76.2	+37.3
0.10	32.4	613.4	+71.4	+33.6
0.15	47.7	596.9	+66.8	+30.0
0.20	62.5	581.1	+62.4	+26.5
0.25	76.8	565.7	+58.1	+23.2
0.30	90.6	550.9	+53.9	+20.0
0.35	103.9	536.6	+49.9	+16.8
0.40	116.8	522.8	+46.1	+13.8
0.45	129.3	509.5	+42.4	+10.9
0.50	141.3	496.6	+38.8	+ 8.1

1979 Catch = 70.0

F	Catch In 80	Stock In 81	% Change In Stock From 79	% Change In Stock From 80
0.05	16.1	621.5	+73.7	+38.2
0.10	31.6	604.8	+69.0	+34.5
0.15	46.6	588.7	+64.5	+30.9
0.20	61.1	573.2	+60.1	+27.4
0.25	75.1	558.2	+56.0	+24.1
0.30	88.6	543.6	+51.9	+20.9
0.35	101.6	529.6	+48.0	+17.7
0.40	114.2	516.1	+44.2	+14.7
0.45	126.4	503.0	+40.5	+11.8
0.50	138.2	490.4	+37.0	+ 9.0

1979 Catch = 80.0

F	Catch In 80	Stock In 81	% Change In Stock From 79	% Change In Stock From 80
0.05	15.7	612.6	+71.2	+39.1
0.10	30.9	596.3	+66.6	+35.4
0.15	45.5	580.5	+62.2	+31.8
0.20	59.7	565.2	+57.9	+28.4
0.25	73.4	550.5	+53.8	+25.0
0.30	86.6	536.3	+49.9	+21.8
0.35	99.3	522.6	+46.0	+18.7
0.40	111.6	509.3	+42.3	+15.7
0.45	123.6	496.5	+38.7	+12.8
0.50	135.1	484.1	+35.3	+ 9.9

1979 Catch = 90.0

F	Catch In 80	Stock In 81	% Change In Stock From 79	% Change In Stock From 80
0.05	15.3	603.6	+68.7	+40.1
0.10	30.2	587.6	+64.2	+36.4
0.15	44.5	572.2	+59.9	+32.8
0.20	58.3	557.3	+55.7	+29.4
0.25	71.6	542.9	+51.7	+26.0
0.30	84.5	529.0	+47.8	+22.8
0.35	97.0	515.5	+44.0	+19.7
0.40	109.1	502.5	+40.4	+16.6
0.45	120.7	490.0	+36.9	+13.7
0.50	132.0	477.8	+33.5	+10.9

1979 Catch = 100.0

F	Catch In 80	Stock In 81	% Change In Stock From 79	% Change In Stock From 80
0.05	15.0	594.6	+66.1	+41.1
0.10	29.4	579.0	+61.8	+37.4
0.15	43.4	563.9	+57.6	+33.8
0.20	56.9	549.3	+53.5	+30.4
0.25	69.9	535.2	+49.5	+27.0
0.30	82.5	521.6	+45.7	+23.8
0.35	94.7	508.4	+42.1	+20.7
0.40	106.5	495.7	+38.5	+17.7
0.45	117.9	483.4	+35.1	+14.7
0.50	128.9	471.5	+31.7	+11.9

Table I-18

Projected mackerel catch in SA 3-6 in 1980 with fishing mortality ranging from 0.05 to 0.50 assuming eight options for catch in 1979, and the resulting spawning stock biomass in 1981 and its percentage change from 1979 and 1980. Catch and stock sizes are expressed as thousands of metric tons.

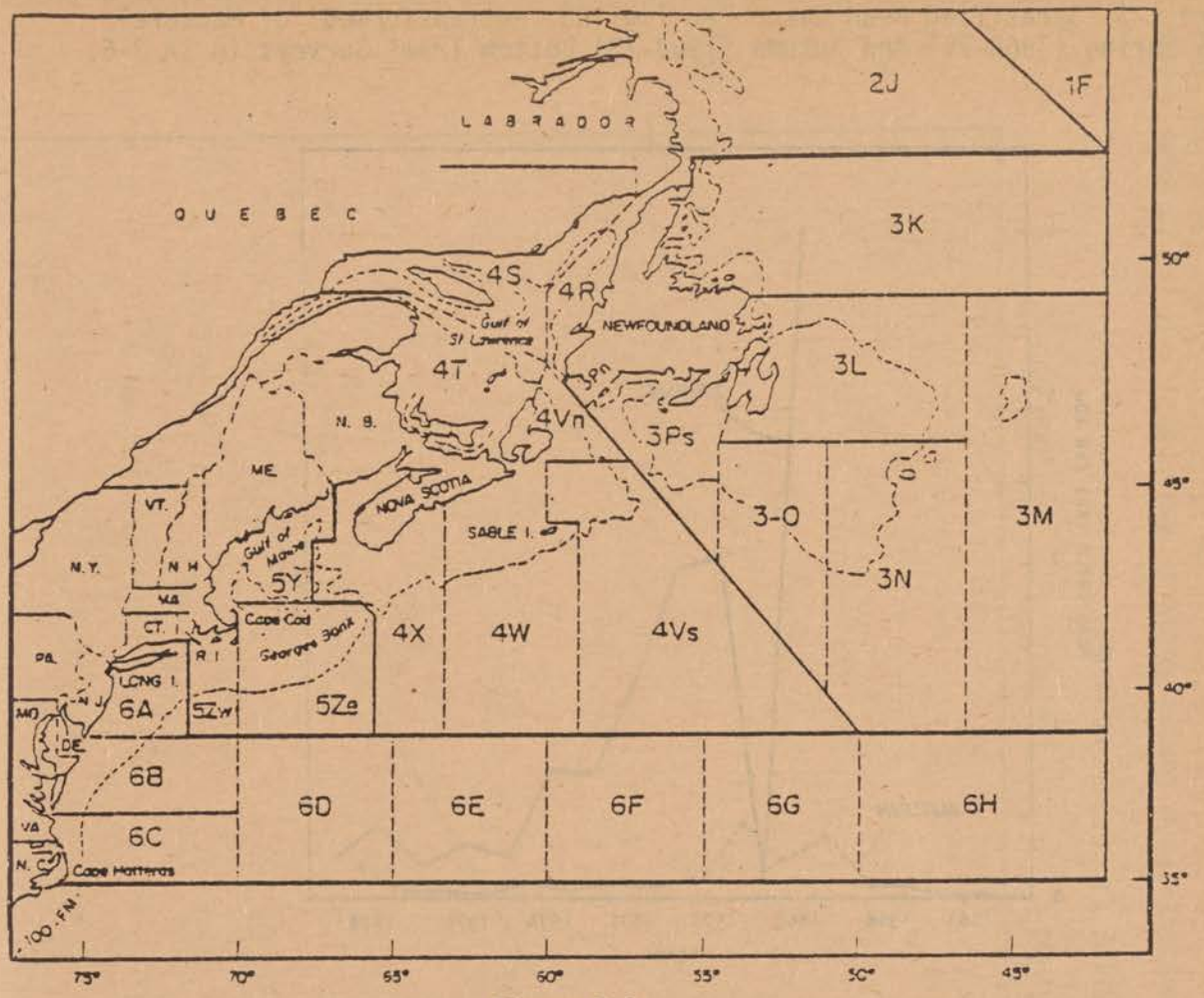


Figure I-1

Northwest Atlantic From North Carolina To Labrador Showing ICNAF SA 3 - 6

Figure I-2

US Bottom Trawl Survey Sampling Strata In The
Northwest Atlantic Between Cape Hatteras And Nova Scotia

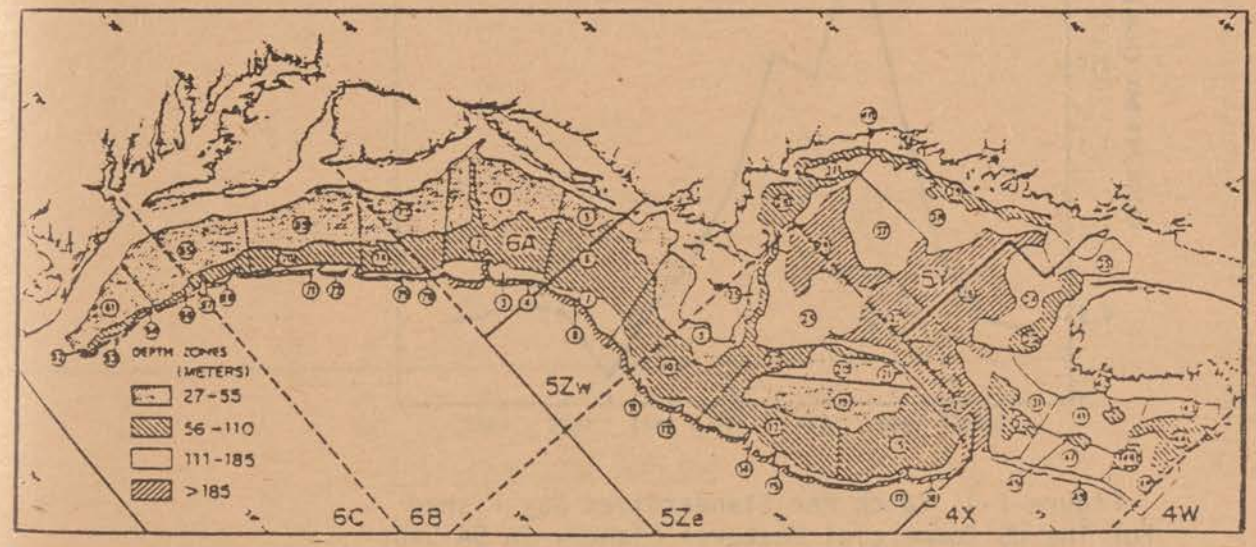
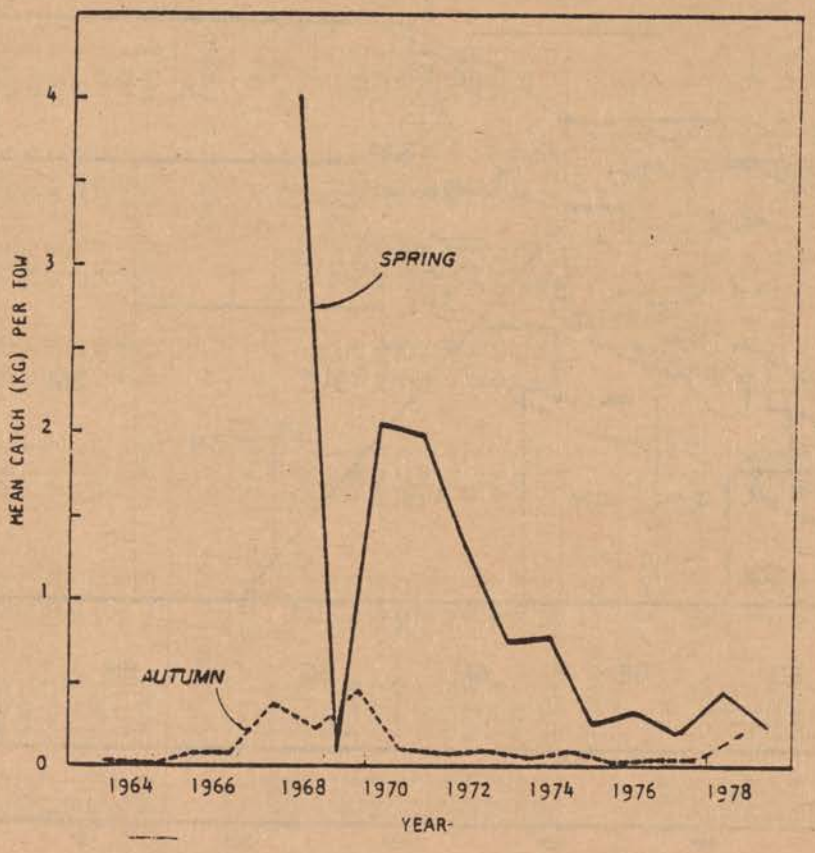


Figure I-3. Stratified Mean Catch Per Tow (KG, Retransformed) Of Mackerel From US Spring (1968-79) And Autumn (1963-78) Bottom Trawl Surveys In SA 3-6.



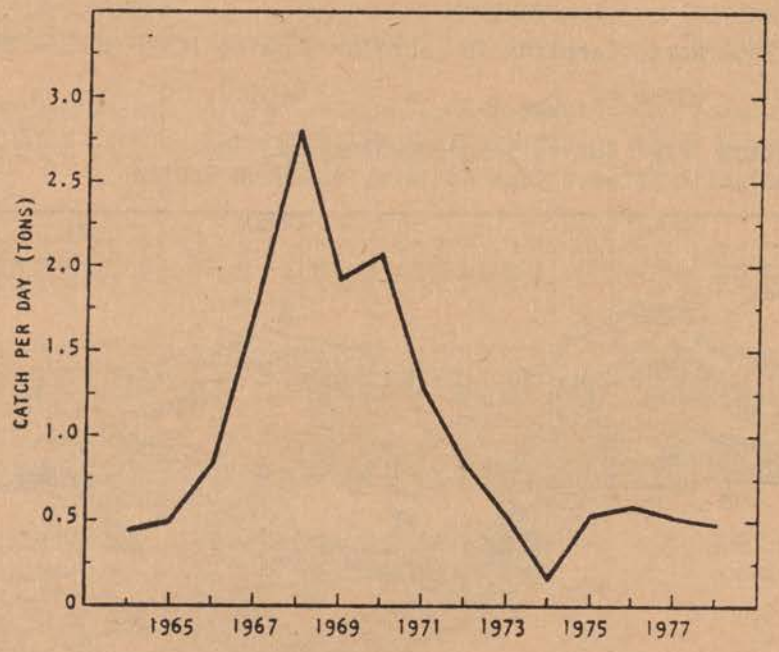


Figure I-4. Catch Per Standardized Day Fished For The US Commercial Mackerel Fishery In SA 5-6.

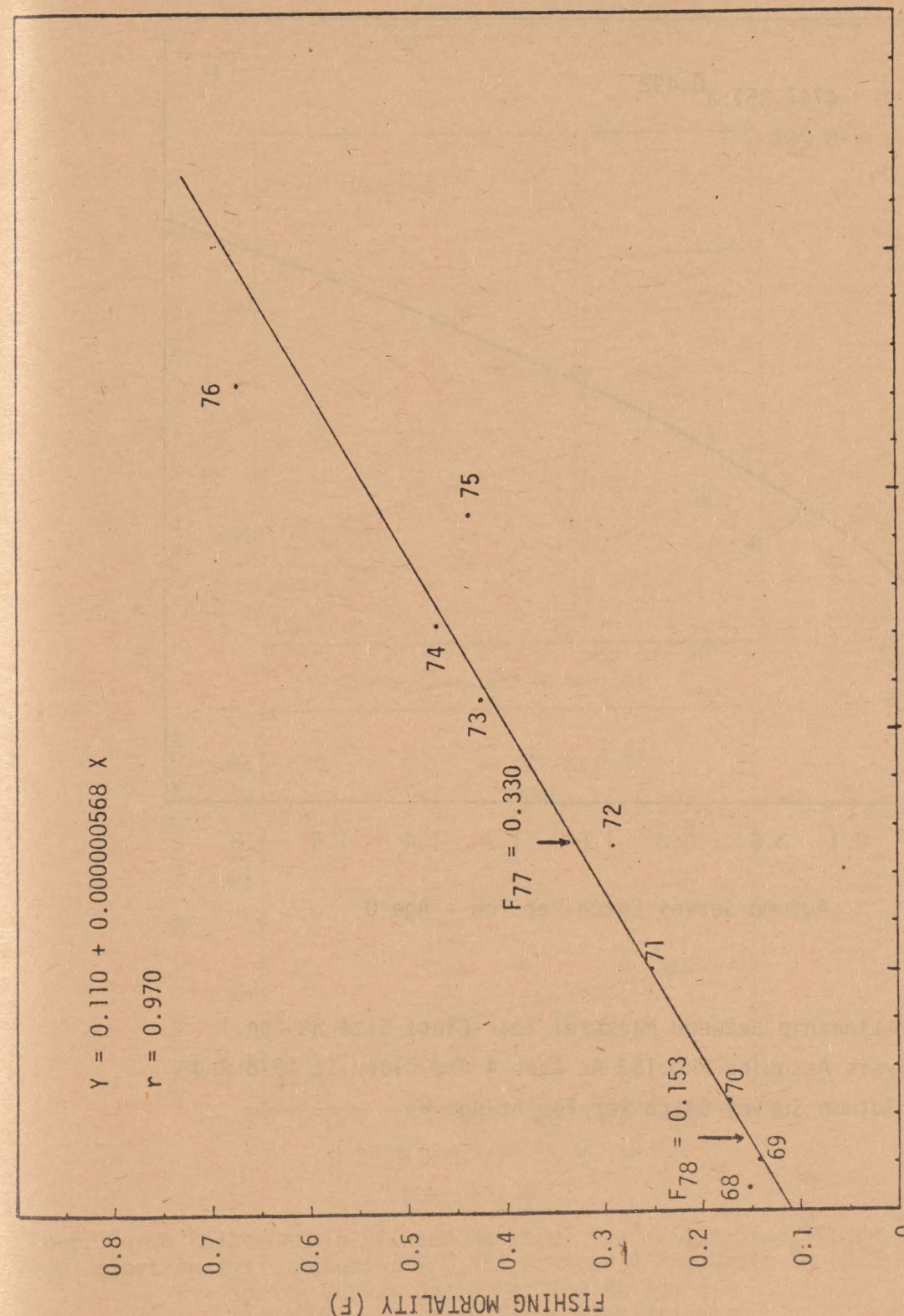
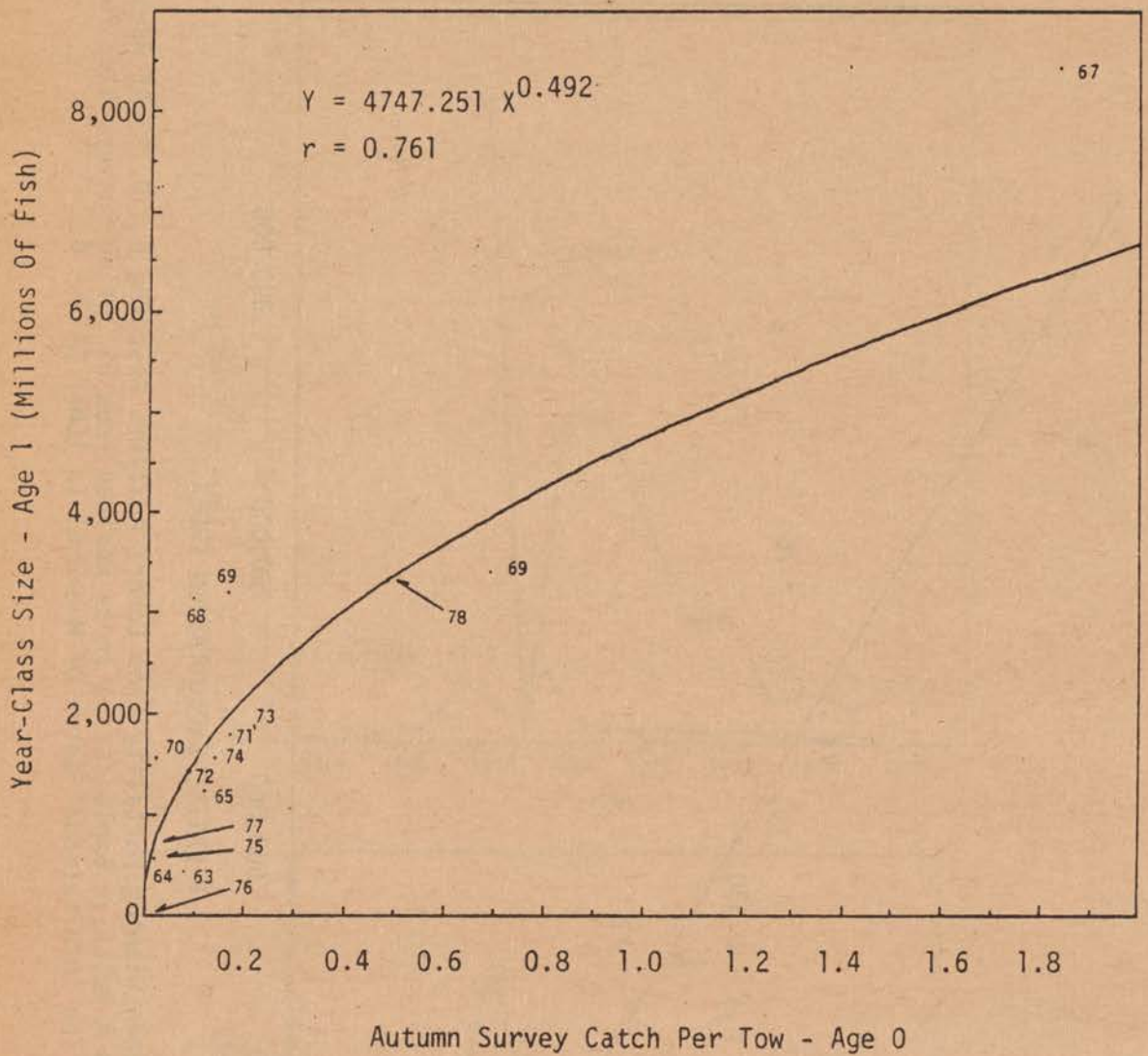


Figure I-5. Relationship Between Fishing Mortality From Cohort Analysis Assuming F = 0.153 At Ages 4 And Older In 1978 And A Relative Exploitation Index Derived From US Spring Survey Catch Per Tow For Mackerel And The International Catch Of Mackerel In ICNAF SA 3 - 6.

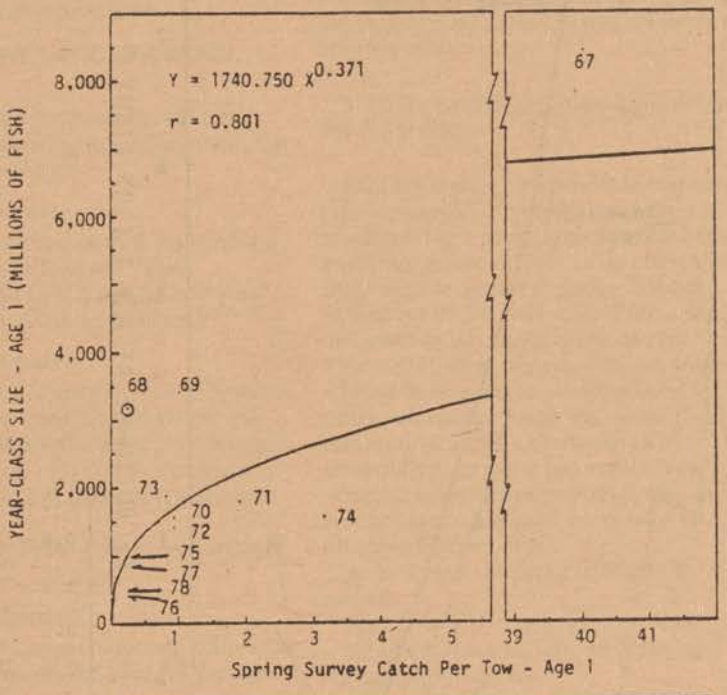
Figure I-6



Power Curve Relationship Between Mackerel Year-Class Size At Age 1 From Cohort Analysis Assuming F=0.153 At Ages 4 And Older In 1978 And Autumn Survey Catch Per Tow At Age 0

Figure I-7

Power Curve Relationship Between Mackerel Year-Class Size At Age 1 From Cohort Analysis Assuming F=0.153 At Ages 4 And Older In 1978 And Spring Survey Catch Per Tow At Age 1
(1968 Value Omitted From Calculation)



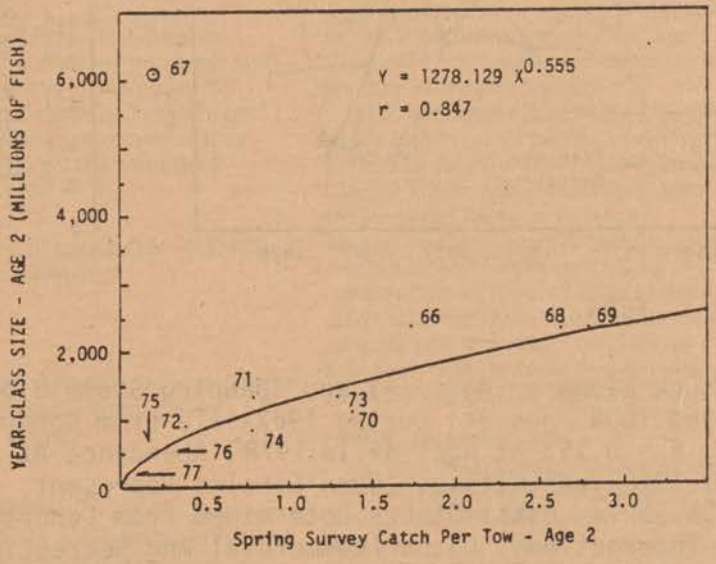


Figure I-8

Power Curve Relationship Between Mackerel Year-Class Size At Age 2 From Cohort Analysis Assuming F=0.153 At Ages 4 And Older In 1978 And Spring Survey Catch Per Tow At Age 2
(1967 Value Omitted From Calculation)

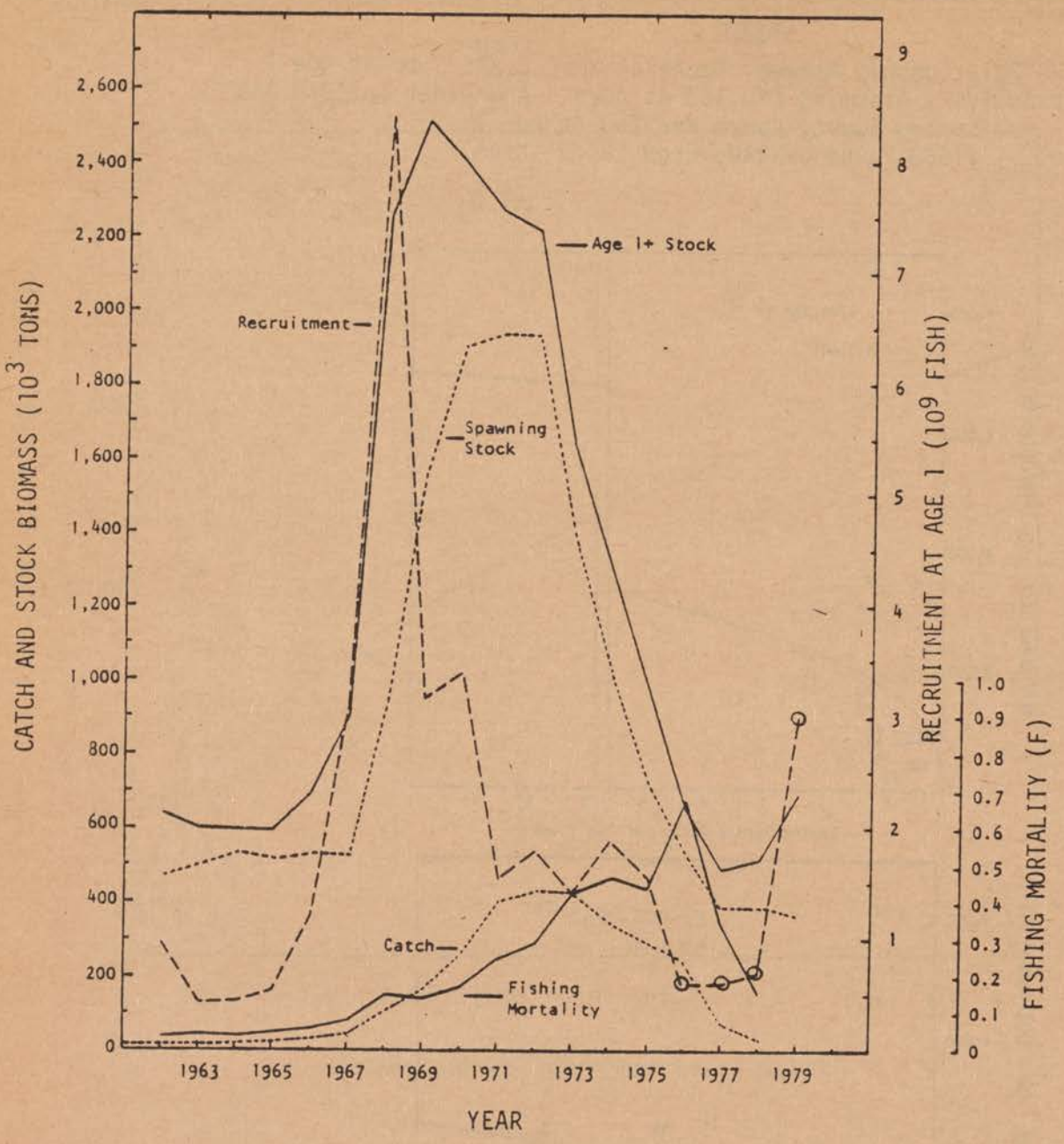


Figure I-9. Total Mackerel Stock Biomass (Ages 1+) and Spawning Stock Biomass (50% Age 2 and 100% Ages 3+) During 1962-1979 From Cohort Analysis Assuming F = 0.153 At Ages 4+ In 1978, Abundance At Age 1 Of The 1961-1978 Year-Classes (Open Circles Represent Estimates Based On Survey Data; Others Determined From Cohort Analysis), Total International Catch (Commercial And Recreational) During 1961-1978, And Fishing Mortality (Mean For Ages 3+, Except In 1978 When Ages 4+) During 1962-1978 In ICNAF SA 3 - 6.

BILLING CODE 3510-22-C

Signed at Washington, D.C. this 28th day of March, 1980.

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

Authority: 16 U.S.C. 1801 *et seq.*

PART 611—FOREIGN FISHING

It is proposed to retain those regulations in Part 611 governing foreign fishing for Atlantic mackerel.

PART 656—ATLANTIC MACKEREL FISHERY

It is proposed to revise Part 656 by making the following amendments to the designated sections:

§ 656.1 [Amended]

Add a new sentence at the end of the paragraph (b) as follows: "The Appendix to 50 CFR § 611.20 contains the TALFF for Atlantic mackerel."

§ 656.2 [Amended]

Section 656.2 is amended as follows:

1. Add the words "ranging from Labrador to North Carolina." at the end of the definition of *Atlantic mackerel.*

2. Delete the definition of commercial fishing.

3. Delete the definition of recreational fishing.

§ 656.4 [Amended]

Section 656.4 is amended as follows:

1. Delete paragraph (a) and substitute the following:

(a) *General.* Every fishing vessel which fishes for Atlantic mackerel under this Part must have a fishing permit issued under this section. Vessels are exempt from this requirement if they catch no more than 100 pounds of mackerel per trip.

* * * * *

2. Strike (vii) in paragraph (c)(2) and substitute the following:

* * * * *

(c) * * *

(2) * * *

(vii) The permit number of any current or previous Federal fishery permit issued to the vessel.

* * * * *

§ 656.5 [Amended]

Section 656.5 is amended as follows:

1. Strike paragraph (a)(1)(i) and substitute the following:

(a) * * *

(1) * * *

(i) Maintain on board the vessel an accurate and complete fishing vessel record on forms supplied by the Regional Director.

* * * * *

2. Strike paragraph (a)(3) and substitute the following:

(a) * * *

(3) Fishing vessel records shall contain information on a daily basis for the entirety of any trip during which mackerel or any other regulated species are caught. The information shall include dates of fishing, type and size of gear used, areas fished, duration of fishing time, time period of tow or gear set, and the estimated weight of each species taken.

* * * * *

3. Strike paragraph (b) and substitute the following:

* * * * *

(b) *Fish dealer and processor reports.* (1) Any person who receives Atlantic mackerel for a commercial purpose from a fishing vessel subject to this Part shall file a weekly report (Sunday through Saturday) within 48 hours of the end of the week in which mackerel is received. This report shall include information on all first purchases of mackerel and all other fish made during the week. Such information shall include date of transaction, name of the vessel from which mackerel was received, and the amount and price paid for mackerel and all other fish received."

4. Add new subparagraph (b) (2), (3), and (4):

(b) * * *

(2) *Domestic mackerel processing capacity.* [Reserved]

(3) Reports required by § 656(b) shall be made on forms supplied by the Regional Director and submitted to a location designated by him.

(4) Any person required by § 656.5(b) to file reports shall permit an Authorized Officer or an employee of the National Marine Fisheries Service designated by the Regional Director to make inspections, and to inspect or reproduce any records or books relating to information required to be contained in those reports. These inspections may take place at the principal place of business or at the location where these required records are regularly kept.

§ 656.6 [Amended]

Section 656.6 is amended as follows:

1. The last sentence in paragraph (a) reads: "the Official Number is the documentation number issued by the U.S. Coast Guard for documented vessels or the registration number issued by a State of the U.S. Coast Guard for undocumented vessels". The word "of" which appears between "State" and "the" is stricken and the word "or" is substituted.

2. Paragraph (b)(2) is amended by striking the words "painted legibly in" which appears in the first sentence, so the sentence now reads:

"The Official Number shall be permanently affixed to or painted on the vessel and shall be block Arabic numerals in contrasting color."

§ 656.7 [Amended]

Section 656.7 is amended as follows:

1. Delete slash which appears in paragraph (c), substitute the word "or".

2. Capitalize the word "Part" which appears in paragraph (e).

3. Strike the word "or" which appears between the words "control" and "ship" in paragraph (f), and substitute "of".

4. Delete slash between "fish dealer" and "processor reports" in paragraph (i) and substitute the word "or".

§ 656.8 [Amended]

Section 656.8 is amended as follows:

1. Insert quotation marks in subparagraph (b)(2) after "you" and before "and".

2. Strike words "Federal Law Enforcement" in subparagraph (c)(4) and substitute "Authorized".

§ 656.21 [Amended]

Section 656.21 is amended as follows:

1. Strike paragraph (a) and substitute the following and renumber (b) as (c) and add a new (b) to read as follows:

(a) *Harvest levels.* The allowed level of harvest of Atlantic mackerel on a fishing year basis is 30,000 metric tons (mt). The initial level of harvest by vessels of the United States is 20,000 mt.

(b) *Reserve.* A reserve of 6,000 mt is available for adjustments to the initial level of domestic harvest and for allocation to the total allowable level of foreign fishing. Allocations to the initial level of foreign harvest shall be made in accordance with the procedures set forth in § 656.22 of this Part.

2. Strike the word "limit" in the first sentence of new paragraph (c) and substitute "restrict".

§ 656.22 [Amended]

Strike entire section, retitle "Allocation" [Reserved].

§ 656.23 [Amended]

Section 656.23 is amended as follows:

1. Strike paragraph (b) and substitute the following:

* * * * *

(b) *Decision to close.* The Assistant Administrator shall close the domestic fishery when it has harvested 80 percent of the total of the initial level of domestic harvest plus the part of the reserve which has not been allocated to the initial level of foreign harvest.

2. Strike the words "recreational or commercial" in paragraph (c).

[FR Doc. 80-7956 Filed 4-2-80; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 45, No. 66
Thursday, April 3, 1980

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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Agency Organization and Personnel; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Committee on Agency Organization and Personnel of the Administrative Conference of the United States, to be held at 9:30 a.m., Wednesday, April 16, 1980, in the library of the Administrative Conference, Suite 500, 2120 L Street, N.W., Washington, D.C.

The Committee will meet to further discuss a proposed recommendation regarding implementation of the Federal Advisory Committee Act. Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify this office at least one day in advance. Members of the public may be permitted to present oral statements, if deemed appropriate by the Committee Chairman. Members of the public may also file a written statement with the Committee before, during, or after the meeting.

For further information concerning this meeting, contact Richard K. Berg (202–254–7020). Minutes of the meeting will be available upon request.

Stephen L. Babcock,

Executive Director.

March 31, 1980.

[FR Doc. 80–10084 Filed 4–2–80; 8:45 am]

BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

Coronado National Forest Grazing Advisory Board; Meeting

The Coronado National Forest Grazing Advisory Board will meet at 10:00 a.m., May 20, 1980, at the Federal Building, Room 7X, 301 W. Congress, Tucson, Arizona. The purpose of this meeting is to discuss allotment management planning and the use of range betterment funds.

The meeting will be open to the public. Persons who wish to attend should notify Larry Allen, Coronado Supervisor's Office, telephone 602–792–6418. Written statements will be filed with the board before or after the meeting.

The board has established the following rule for public participation: Nonmembers are asked to withhold comments until the close of business.

K. R. Weissenborn,

Forest Supervisor.

[FR Doc. 80–10107 Filed 4–2–80; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

Bellefontaine High School Flood Prevention RC & D Measure, Ohio; Finding of No Significant Impact

AGENCY: Soil conservation Service, U.S. Department of Agriculture.

ACTION: Notice of a finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Mr. Robert R. Shaw, State Conservationist, Soil Conservation Service, 522 Federal Building, 200 North High Street, Columbus, Ohio 43215, telephone 614–469–6785.

NOTICE: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Bellefontaine High School Flood Prevention RC & D Measure, Logan County, Ohio.

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Robert R. Shaw, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for flood prevention. The planned works of improvement include construction of 450 feet of grassed waterway, 920 feet of subsurface drainage, 1 concrete catch basin, and 1 acre of critical area planting. Critical area planting will be applied to all areas disturbed during construction.

The Notice of a Finding of No Significant Impact (FNSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Robert R. Shaw, State Conservationist, Soil Conservation Service, 522 Federal Building, 200 North High Street, Columbus, Ohio 43215, telephone 614–469–6785. The FNSI has been sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the FNSI are available to fill single copy requests at the above address.

Implementation of the proposal will not be initiated until 30 days after the date of this publication.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program—Pub. L. 87–703, 16 U.S.C. 590a–f, q)

Dated: March 24, 1980.

Edward E. Thomas,

Assistant Administrator for Land Resources.

[FR Doc. 80–10112 Filed 4–2–80; 8:45 am]

BILLING CODE 3410–16–M

Charleston Public School Critical Area Treatment RC & D Measure, Arkansas; Finding of No Significant Impact

AGENCY: Soil Conservation Service, U.S. Department of Agriculture.

ACTION: Notice of a finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Mr. M. J. Spears, State Conservationist, Soil Conservation Service, 5029 Federal Building, 700 West Capitol Avenue, Little Rock, Arkansas 72203, telephone 501–378–5445.

NOTICE: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Charleston Public

School Critical Area Treatment RC&D Measure, Franklin County, Arkansas.

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. M. J. Spears, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for critical area treatment. The planned works of improvement include shaping, grading, sprigging, solid sodding, placement of topsoil, fertilizing, seeding, irrigation, and the installation of a diversion and riprap to reduce or control the critically eroding areas.

The Notice of a Finding of No Significant Impact (FNSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. M. J. Spears, State Conservationist, Soil Conservation Service, 5029 Federal Building, 700 West Capitol Avenue, Little Rock, Arkansas 72203, telephone 501–378–5445. The FNSI has been sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the FNSI are available to fill single copy requests at the above address.

Implementation of the proposal will not be initiated until 30 days after the date of this publication.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program—Public Law 87–703, 16 U.S.C. 590a–f, q)

Dated: March 24, 1980.

Edward E. Thomas,

Assistant Administrator for Land Resources.

[FR Doc. 80–10113 Filed 4–2–80; 8:45 am]

BILLING CODE 3410–16–M

North Fork-Forked Deer River Watershed, Tennessee; Finding of No Significant Impact

AGENCY: Soil Conservation Service, U.S. Department of Agriculture.

ACTION: Notice of finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Mr. Donald C. Bivens, State Conservationist, Soil Conservation Service, 675 U.S. Courthouse, 801 Broadway Street, Nashville, Tennessee 37203, telephone number (615) 251–5471.

NOTICE: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the land treatment to be accomplished in the North Fork-Forked Deer River Watershed, Gibson County, Tennessee.

The environmental evaluation of this federally-assisted action indicates that the proposed measures will not cause significant adverse local, regional, or national impacts on the environment. As a result of these findings, Mr. Donald C. Bevins, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed.

The proposed action involves the planning and application of conservation practices. These practices may include but are not limited to the following: contour cultivation, minimum tillage, terraces, grass waterways/pipe outlets, grass and tree plantings, wildlife upland habitat development and the use of shaping and sodding, grade stabilization, and debris basins to reduce or control critically eroding areas.

The finding of no significant impact has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental evaluation and the environmental assessment are on file and may be reviewed by contacting Mr. Donald C. Bivens, State Conservationist, Soil Conservation Service, 675 U.S. Courthouse, 801 Broadway Street, Nashville, Tennessee 37203, telephone number (615) 251–5471.

The finding of no significant impact has been sent to interested Federal, state, and local agencies and other interested parties. A limited number of copies of the finding of no significant impact are available to fill single copy requests.

No administrative action on implementation of the proposal will be taken until May 5, 1980.

(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: March 21, 1980.

Joseph W. Haas,

Assistant Administrator for Water Resources, Soil Conservation Service.

[FR Doc. 80–10110 Filed 4–2–80; 8:45 am]

BILLING CODE 3410–16–M

Petrova Athletic Field RC & D Measure, New York; Finding of No Significant Impact

AGENCY: Soil Conservation Service, U.S. Department of Agriculture.

ACTION: Notice of a finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Mr. Paul A. Dodd, State Conservationist, Soil Conservation Service, Room 771 Federal Building, 100 South Clinton Street, Syracuse, New York 13260, telephone 315–423–5076.

NOTICE: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines, (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Petrova Athletic Field RC & D Measure, Franklin County, New York.

The environmental assessment of this Federal action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Paul A. Dodd, State Conservationist, has determined that the preparation and review of an environmental impact statment are not needed for this project.

The measure concerns a plan for the adequate drainage of the Petrova Avenue Athletic Field. The plan includes a subsurface tile outlet system of approximately 4,325 feet. The system will outlet into the village of Saranac Lake storm drain.

The Notice of a Finding of No Significant Impact has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Paul A. Dodd, State Conservationist, Soil Conservation Service, Room 771 Federal Building, 100 South Clinton Street, Syracuse, New York, 315–423–5076. The environmental assessment and the finding of no significant impact have been prepared and sent to various Federal, State and local agencies and interested parties. A limited number of copies of the finding of no significant impact are available to fill single copy requests at the above address.

Implementation of the proposal will not be initiated until 30 days after the date of this publication.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program—Pub. L. 87–703, 16 U.S.C. 590 a-f,q)

Dated: March 24, 1980.

Edward E. Thomas,

Assistant Administrator for Land Resources.

[FR Doc. 80-10111 Filed 4-2-80; 8:45 am]

BILLING CODE 3410-16-M

Plum Creek Watershed, Texas; Finding of No Significant Impact

AGENCY: Soil Conservation Service, U.S. Department of Agriculture.

ACTION: Notice of finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Mr. George C. Marks, State Conservationist, Soil Conservation Service, W. R. Poage Federal Building, Temple, Texas 76501, telephone number (817) 774-1255.

NOTICE: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for critical area treatment in the Plum Creek Watershed project, Hays, Travis, and Caldwell Counties, Texas.

The environmental evaluation of this federally-assisted action indicates that the proposed measures will not cause significant adverse local, regional, or national impacts on the environment. As a result of these findings, Mr. George C. Marks, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed.

The proposed action involves the use of clearing, shaping, preparation of vegetation, fertilizing, vegetating, fencing, and construction of appurtenant grade stabilization structures such as pipe drops, drop inlets, formless concrete chutes, diversions, and dams to reduce or control critically eroding areas.

The finding of no significant impact has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental evaluation and the environmental assessment are on file and may be reviewed by interested parties by contacting Mr. George C. Marks, State Conservationist, Soil Conservation Service, W. R. Poage Federal Building, Temple, Texas 76501, telephone number (817) 774-1255.

The finding of no significant impact has been sent to interested Federal, State, and local agencies and other interested parties. A limited number of copies of the finding of no significant impact are available to fill single copy requests at the above address.

No administrative action in implementation of the proposal will be taken until May 5, 1980.

(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)

[FR Doc. 80-10109 Filed 4-2-80; 8:45 am]

BILLING CODE 3410-16-M

Upper Red Rock Creek Watershed, Okla.; Finding of No Significant Impact

AGENCY: Soil Conservation Service, U.S. Department of Agriculture.

ACTION: Notice of finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Mr. Roland R. Willis, State Conservationist, Soil Conservation Service, Agricultural Center Building, Stillwater, Oklahoma 74074, telephone number (405) 624-4360.

NOTICE: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for two floodwater retarding structures remaining to be built in the Upper Red Rock Creek Watershed project, Garfield County, Oklahoma.

The environmental assessment of this federally-assisted action indicates that the action will not cause significant impacts to human environment. As a result of these findings, Mr. Roland R. Willis, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this action.

Project action will involve the construction of two floodwater retarding structures.

The finding of no significant impact has been forwarded to the Environmental Protection Agency. The environmental assessment is on file and may be reviewed by the interested parties by contacting Mr. Roland R. Willis, State Conservationist, Soil Conservation Service, Agricultural Center Building, Farm Road and Brumley Street, Stillwater, Oklahoma 74074, telephone number (405) 624-4360. The finding of no significant impact has been sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the finding of no significant impact are available to fill single copy requests at the above address.

No administrative action on implementation of the proposal will be taken until May 5, 1980.

(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: March 20, 1980.

Joseph W. Haas,

Assistant Administrator for Water Resources, Soil Conservation Service.

[FR Doc. 80-10108 Filed 4-2-80; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Hawaiian Monk Seal in the Northwestern Hawaiian Islands; Public Meeting on Proposed Designation of Critical Habitat

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of Public Meeting and Availability of a Draft Environmental Impact Statement.

SUMMARY: On February 7, 1980 the Environmental Protection Agency announced the availability of a draft environmental impact statement (DEIS) on the proposed designation of Critical Habitat for the Hawaiian Monk Seal in the Northwestern Hawaiian Islands and the beginning of the required 45-day review period. This DEIS is available for distribution at the locations listed below. A public meeting will be held on April 28, 1980 to discuss the proposed action. The comment period on the proposed designation of Critical Habitat will be extended unitl May 14, 1980 to allow sufficient time to submit comments on issues raised at the public meeting.

DATES: The public meeting will begin at 7:00 p.m. local time, Monday, April 28, 1980 in the State Senate Chamber, State Capital Building, Honolulu, Hawaii.

FOR FURTHER INFORMATION CONTACT: Mr. Doyle Gates, Administrator, Western Pacific Program Office, Southwest Region, National Marine Fisheries Service, NOAA, 2570 Dole Street, Honolulu, Hawaii 96812, Telephone: 808-946-2181.

AVAILABILITY OF THE DEIS:

Office of Marine Mammals and Endangered Species, National Marine Fisheries Service,

Washington, D.C. 20235, Telephone: 202–634–7471.

Western Pacific Program Office, Southwest Region, National Marine Fisheries Service, P.O. Box 3830, Honolulu, Hawaii 96812, Telephone: 808–946–2181.

Dated: March 28, 1980.

Robert K. Crowell,

Acting Executive Director, National Marine Fisheries Service.

[FR Doc. 80–10144 Filed 4–2–80; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Task Force on Evaluation of Audit, Inspections, and Investigative Components of the Department of Defense; Advisory Committee Meeting; Correction

This is a correction of the notice published in the **Federal Register** on March 25, 1980 (45 FR 19296). The notice announced a task force meeting on April 7, 1980, from 1000 to 1200 and 1330 to 1600 hours. This notice hereby changes the meeting hours to 1330 to 1600 only, eliminating the morning meeting.

Dated: March 31, 1980.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Service, Department of Defense.

[FR Doc. 80–10146 Filed 4–2–80; 8:45 am]

BILLING CODE 3810–70–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[EPA Cases Nos. 67023–9142–03, 04, 05–81]

Department of Defense (DOD) Naval Ordnance Station, Indian Head, Md.; Issuance of Proposed Prohibition Orders Pursuant to Sections 302 and 701 of the Powerplant and Industrial Fuel Use Act of 1978

The Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice pursuant to Section 701(b) of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), 42 U.S.C. 8301 *et seq.*, of the issuance of the following proposed prohibition orders which would prohibit the installations named below from burning natural gas or petroleum as their primary energy source.

Proposed Prohibition Orders

Pursuant to the authorities granted it by Section 302(a) [1] of FUA, ERA issues these proposed prohibition orders to the following installations owned by the United States,

ERA No.	Facility	Installation	Size	Location
67023–9142–03–81	DOD–Naval	3	187 MMBTU/Hr	Indian Head, Md.
67023–9142–04–81	Ordnance	4	187 MMBTU/Hr	
67023–9142–05–81	Station-Goddard power plant	5	187 MMBTU/Hr	

Statement of Basis and Rationale for Proposed Prohibition Orders

ERA has issued regulations applicable to existing facilities 10 CFR Part 506 (Regulations), to implement the prohibitions contained in Section 302(a) of Title III of FUA. Section 506.2 of the Regulations sets forth the basis upon which ERA will propose to prohibit by order the use of natural gas or petroleum as a primary energy source by an installation where ERA finds that the installation has or previously had the technical capability to use an alternate fuel as a primary energy source.

According to the most recent fuel statistics available to ERA, Goddard 3,4, and 5 consume 680 barrels of oil daily (250,000 barrels annually). Therefore, ERA anticipates that approximately this quantity will be displaced by the conversion of Goddard 3,4, and 5 to coal or another alternate fuel as their primary energy source.

Finding of Technical Capability

In accordance with Section 302(a) of Title III of FUA, these proposed orders are based on a finding by ERA that Goddard 3,4, and 5 have or previously had the technical capability to use an alternate fuel (coal) as a primary energy source. This finding is based upon the following facts:

The Naval Ordnance Station, Indian Head, Maryland reported to DOD on Form 1391c, dated February 17, 1978 (Items 5(b) and 6) that Goddard 3,4, and 5 were designed and constructed for dual fuel firing with pulverized coal or No. 6 oil, and burned coal until 1970 at which time they commenced operations with fuel oil as the primary fuel.

The technical capability finding is made in accordance with the requirements of § 506.2 of the Regulations, taking into consideration the ability of the installations, from the point of fuel intake, to physically sustain combustion of coal and maintain heat transfer as evidenced by the burning of coal at Goddard 3,4, and 5 prior to 1971. This finding also recognizes, in accordance with § 506.2, that Goddard 3,4, and 5 are capable of burning coal notwithstanding the fact that minor adjustments may need to be made before the units may burn an alternate fuel (coal) as a primary energy source, or that pollution control equipment may be required to meet air quality requirements.

Other Required Findings

Section 302(a) of FUA states that prior to the issuance of final prohibition orders ERA must find that (1) the installations have the technical capability to use coal or another alternate fuel as a primary energy source, or they could have such capability without (A) substantial modification of the installations or (B) substantial reduction in the rated capacity of the installations; and (2) it is financially feasible for DOD-Naval Ordnance Station to use coal or another alternate fuel as the primary energy source in Goddard 3,4, and 5.

Proposed Prohibition Under Title III of FUA

Subject to the other required findings that ERA must make, ERA hereby proposes to prohibit Goddard 3,4, and 5 from burning petroleum or natural gas as their primary energy source.

Description of Prohibition Order Proceedings

Pursuant to Section 302 of FUA, ERA has promulgated regulations applicable to the issuance of prohibition orders to existing facilities, a summary of which follows:

(1) ERA has performed its initial information gathering with respect to the question of technical capability to burn alternate fuels (coal) and has informed DOD–Naval Ordnance Station that it is considering issuance of proposed prohibition orders to Goddard 3,4, and 5. ERA has also had informal discussions with DOD–Naval Ordnance Station concerning the issuance of the proposed prohibition orders.

(2) ERA has made a finding that Goddard 3,4 and 5 have or previously had the technical capability of using coal as their primary energy source. ERA is publishing this finding and proposed prohibition orders in the **Federal Register** as required by Section 701(b) of FUA. In accordance with Section 302(a) of FUA, the proposed

[1] Section 403(a)(1) of FUA provides that a Federal agency operating an installation must comply with FUA's provisions to the same extent as would be the case if the installation were owned or operated by a person in the private sector.

prohibition orders are not required to contain, at this point in the proceeding, the other pertinent findings that ERA must make before final prohibition orders can be issued. These are (1) that the installations have the technical capability to use coal or another alternate fuel as their primary energy source, or they could have such capability without (A) substantial physical modification of the installations, or (B) substantial reduction in the rated capacity of the installations and (2) that it is financially feasible for DOD–Naval Ordnance Station to use coal or another alternate fuel as the primary energy source in Goddard 3,4, and 5.

(3) In accordance with § 501.52(b)(3) of the Regulations, a public comment period of at least three months is to commence after publication of the proposed prohibition orders, during which period DOD–Naval Ordnance Station will be given an opportunity to challenge ERA's initial finding of a technical capability contained in these proposed prohibition orders. During this three month comment period, under § 501.52(b)(3) of the regulations, DOD–Naval Ordance Station is required to furnish ERA with such additional evidence as is necessary to enable ERA to make the other statutory findings set forth above, which are required to be made by ERA prior to issuance of final prohibition orders. DOD–Naval Ordnance Station will also be required during this period, to identify, but not to demonstrate its entitlement to, any exemptions for which Goddard 3,4 and 5 may qualify.

(4) Subsequent to the end of the three month public comment period, ERA will issue a notice of whether ERA intends to proceed with the prohibition order proceeding. Within three months of the issuance of the notice of intention to proceed with the prohibition order, the owner or operator of the installations that may be subject to the orders may demonstrate prior to issuance of final prohibition orders that the installations would qualify for exemptions if the prohibition had been established by rule.

(5) Subsequent to the end of the second three month period, ERA will, if it intends to issue final prohibition orders, prepare and publish a notice of availability of the tentative staff decision.

(6) Under the provisions of Section 701(d) of FUA, any interested person may request a public hearing on the proposed prohibition orders. Interested persons wishing a hearing must request a hearing within 45 days after publication of the notice of availability of the tentative staff decision. If a hearing is requested, ERA shall provide interested persons with an opportunity to present oral data, views, and arguments at a public hearing held in accordance with Subpart C of 10 CFR Part 501.

(7) At the hearing, if any, interested persons will have the opportunity to question the parties about ERA's proposed orders and tentative staff decision, the DOD–Naval Ordnance Station showing on exemptions and rebuttal of ERA's proposed orders, and ERA's rebuttal to any showing of potential qualification for exemption.

(8) After the hearing, if any, and the second three month comment period, ERA shall determine whether final prohibition orders will be issued, based upon a review of the entire adminstrative record. Copies of final prohibition orders, if issued, together with a summary of the basis therefor, will be published in the **Federal Register.** Such orders shall not take effect earlier than 60 days after publication.

Comment and Public Hearing Procedures

ERA hereby also gives notice of the opportunity to submit written comments, views, and arguments by interested persons regarding these proposed prohibition orders. Comments need not be limited to ERA's technical capability finding, but may include a discussion of all three statutory findings.

The initial comment period shall remain open for a period of three months after publication of the proposed orders in the **Federal Register** unless reduced at the request of the recipient of the proposed orders pursuant to 10 CFR 501.52(b)(8). Notice of any change during the time for public comment will be published in the **Federal Register.** Comments should make reference to the docket numbers set forth in this notice and proposed orders. Comments should address the adequacy and validity of the findings and any other aspects or impacts of the proposed prohibition orders believed to be relevant. Written comments on the proposed prohibition orders should be directed to Public Hearing Management (Case Nos. 67023–9142–03,04,05–81), U.S. Department of Energy, Box 4629, Room 3214, 2000 M Street, N.W., Washington, D.C. 20461, and should be received before 4:30 p.m. on May 14, 1980.

In accordance with 10 CFR 501.34, any interested person may request a public hearing on the proposed orders. The request must include a description of the person's interest in the proposed prohibition orders, an outline of the anticipated content of the presentation to be made at the public hearing, and an address and telephone number where the person requesting the public hearing may be reached.

Comments and other documents submitted to DOE Public Hearing Management should be identified on the outside of the envelope in which they are transmitted and on the document itself with the designation "Proposed Prohibition Orders for DOD–Naval Ordnance Station, Indian Head, Maryland." Fifteen copies should be submitted. All written comments, all oral presentations, and all other relevant information submitted to or available to ERA will be considered by ERA. Any information or data considered to be confidential by the person furnishing it must also be so identified in writing and filed in accordance with 10 CFR 501.7(f).

ERA reserves the right to determine the confidential status of the information or data and to treat it in accordance with that determination.

For further information contact:

William L. Webb (Office of Public Information), Economic Regulatory Administration, Department of Energy, 2000 M Street, N.W., Room B–110, Washington, D.C. 20461 (202) 653–4055.
Robert L. Davies (Office of Fuels Conversion), Economic Regulatory Administration, Department of Energy, 2000 M Street, N.W., Room 3128–L, Washington, D.C. 20461 (202) 653–3649.
Walter A. Romanek (Federal Facilities Branch), Economic Regulatory Administration, Department of Energy, 2000 M Street, N.W., Room 3214–D, Washington, D.C. 20461 (202) 653–3669.
Marya Rowan (Office of General Counsel), Department of Energy, Forrestal Building, Room 6–G–087, Washington, D.C. 20585 (202) 252–2967.

(Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.;* Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.;* E.O. 12009 (42 F.R. 46267))

Issued in Washington, D.C., March 28, 1980.

Robert L. Davies,

Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 80–10120 Filed 4–2–80; 8:45 am]
BILLING CODE 6450–01–M

[ERA Docket No. 80–CERT–010]

Nebraska Municipal Power Pool; Certification of Eligible Use of Natural Gas To Displace Fuel Oil

The Nebraska Municipal Power Pool (NMPP), 1335 L Street, Lincoln, Nebraska 68508, acting on behalf of The Board of Public Works of the City of Auburn, Nebraska; The Board of Public Works of the City of Fairbury,

Nebraska; The City Utilities Department of the City of Wahoo, Nebraska; The City Utilities Department of the City of West Point, Nebraska; The City Utilities Department of the City of Crete, Nebraska; The Board of Public Works of the City of Tecumseh, Nebraska; and the Village Board of Trustees of the Village of Pender, Nebraska, filed an application for certification of an eligible use of natural gas to displace fuel oil at the above member's seven municipal electric generating facilities in Nebraska, with the Administrator of the Economic Regulatory Administration (ERA) pursuant to 10 CFR Part 595 on January 3, 1980. Notice of that application was published in the **Federal Register** (45 FR 15612, March 11, 1980) and an opportunity for public comment was provided for a period of ten (10) calendar days from the date of publication. No comments were received.

The ERA has carefully reviewed NMPP's application in accordance with 10 CFR Part 595 and the policy considerations expressed in the Final Rulemaking Regarding Procedures for Certification of the Use of Natural Gas to Displace Fuel Oil (44 FR 47920, August 16, 1979). The ERA has determined that NMPP's application satisfies the criteria enumerated in 10 CFR Part 595, and, therefore, has granted the certification and transmitted that certification to the Federal Energy Regulatory Commission. A copy of the transmittal letter and the actual certification are appended to this notice.

Issued in Washington, D.C., on March 26, 1980.

Paul T. Burke,

Deputy Assistant Administrator, Office of Petroleum Operations, Economic Regulatory Administration.

Department of Energy
Washington, D.C. 20461
March 26, 1980.

Re: ERA Certification of Eligible Use ERA Docket No. 80–CERT–010, Nebraska Municipal Power Pool.

Mr. Kenneth F. Plumb,
Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C.

Dear Mr. Plumb: Pursuant to the provisions of 10 CFR Part 595, I am hereby transmitting to the Commission the enclosed certification of an eligible use of natural gas to displace fuel oil. This certification is required by the Commission as a precondition to interstate transportation of fuel oil displacement gas in accordance with the authorizing procedures in 18 CFR Part 284, Subpart F. As noted in the certificate, it is effective for one year from the date of issuance, unless a shorter period of time is required by 18 CFR Part 284, Subpart F. A copy of the enclosed certification is also being published in the **Federal Register** and provided to the applicant.

Should the Commission have any further questions, please contact Mr. Finn K. Neilsen, Director, Import/Export Division, Economic Regulatory Administration, 2000 M Street, N.W., Room 4126, Washington, D.C. 20461, telephone (202) 653–3859. All correspondence and inquiries regarding this certification should reference ERA Docket No. 80–CERT–010.

Sincerely,

Paul T. Burke,

Deputy Assistant Administrator, Office of Petroleum Operations, Economic Regulatory Administration.

Certification by the Economic Regulatory Administration to the Federal Energy Regulatory Commission of the Use of Natural Gas for Fuel Oil Displacement by The Nebraska Municipal Power Pool

ERA Docket No. 79–CERT–110

Application for Certification

Pursuant to 10 CFR Part 595, Nebraska Municipal Power Pool (NMPP) filed an application for certification of an eligible use of approximately 7,080 Mcf per day of natural gas at the electric generating facilities of seven of its members with the Administrator of the Economic Regulatory Administration (ERA) on January 3, 1980. Those members are the Board of Public Works of the City of Auburn, Nebraska; The Board of Public Works of the City of Fairbury, Nebraska; The City Utilities Department of the City of Wahoo, Nebraska; the City Utilities Department of the City of West Point, Nebraska; The City Utilities Department of the City of Crete, Nebraska; The Board of Public Works of the City of Tecumseh, Nebraska; and the Village Board of Trustees of the Village of Pender, Nebraska. The application states that the eligible seller of the gas in Esperanza Transmission Company (Esperanza) and that the gas will be transported by the Northern Natural Gas Company and then local distribution companies will make delivery to the various facilities. The application and supplemental information indicate that the use of this natural gas is estimated to displace 35,000 gallons of No. 2 fuel oil (0.3 percent sulfur) per day at six of the electric generating facilities and 10,050 gallons of No. 6 fuel oil (0.5 percent sulfur) at the Fairbury facility. The application also indicates that neither the gas nor the displaced fuel oil will be used to displace coal in the applicant's facilities.

Certification

Based upon a review of the information contained in the application, as well as other information available to ERA, the ERA hereby certifies, puruanat to 10 CFR Part 595, that the use of approximately 7,080 Mcf of natural gas per day at the electric generating facilities of the NMPP members listed above purchased from Esperanza is an eligible use of gas within the meaning of 10 CFR Part 595.

Effective Date

This certification is effective upon the date of issuance, and expires one year from that date, unless a shorter period of time is required by 18 CFR Part 284, subpart F. It is effective during this period of time for the use of up to the same certified volume of natural gas at the same facilities purchased from the same eligible seller.

Issued in Washington, D.C., on March 26, 1980.

Paul T. Burke,

Deputy Assistant Administrator, Office of Petroleum Operations, Economic Regulatory Administration.

[FR Doc. 80-10118 Filed 4-2-80; 8:45 am]

BILLING CODE 6450-01-M

[ERA Cases Nos. 52007-1626-01-82; 52007-1626-02-82 and 52007-1626-03-82]

New England Electric System, Westborough, Mass.; Issuance of Proposed Prohibition Orders Pursuant to Sections 301 and 701 of the Powerplant and Industrial Fuel Use Act of 1978

The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice pursuant to Section 701(b) of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), 42 U.S.C. 8301 *et seq.*, of the issuance of the following proposed prohibition orders which would prohibit the powerplants named below (Powerplants) from burning natural gas or petroleum as their primary energy source.

Proposed Prohibition Orders

Pursuant to the authority granted it by Section 301(b) of FUA, ERA issues these proposed prohibition orders to the following Powerplants owned by the New England Electric System (Utility).

ERA No.	Generating station	Powerplant No.	MW	Location
52007-1626-01-82	Salem Harbor	01	82	Salem, Massachusetts.
52007-1626-02-82	do	02	82	Do.
52007-1626-03-82	do	03	170	Do.

Statement of Basis and Rationale for Proposed Prohibition Orders

ERA has issued regulations applicable to existing facilities, 10 CFR Part 504 (Regulations), to implement the prohibitions contained in Section 301(b) of Title III of FUA. Section 504.5 of the Regulations sets forth the basis upon which ERA will propose to prohibit by order the use of natural gas or petroleum as a primary energy source by a powerplant, where ERA finds that the

powerplant has or previously had the technical capability to use an alternate fuel as a primary energy source.

The Utility reported to the Federal Energy Regulatory Commission (FPC Form 67), for the year ending December 31, 1978, that Salem Harbor Powerplant Nos. 1, 2 and 3 burned an average of 7,280 barrels of oil per day (2,660,000 barrels annually). The potential oil displacement in converting Salem Harbor Powerplant Nos. 1, 2 and 3 to an alternate fuel (coal), assuming a capacity factor of 70 percent, is 8,900 barrels of oil per day (3,250,000 barrels annually).

Finding of Technical Capability

In accordance with Section 301(b) of Title III of FUA, these proposed orders are based on a finding by ERA that the Utility's powerplants have or previously had the technical capability to use an alternate fuel (coal) as a primary energy source. This finding is based upon engineering drawings furnished by the Utility to ERA entitled "Salem Harbor Station Power Plant Cross Section—Unit No. 1 and 2" and "Salem Harbor Station Power Plant Cross Section—Unit No. 3," Drawing Numbers H–18264 and H–18265, both dated February 1958. The engineering drawings, as well as a site visit made by the staff of ERA on February 21, 1980, confirm that the powerplants are technically capable of burning coal.

The technical capability finding is made in accordance with the requirements of § 504.5(d) of the Regulations, taking in consideration the ability of the Powerplants, from the point of fuel intake, to physically sustain combustion of coal and maintain heat transfer. This finding also recognizes, in accordance with § 504.5(d), that the Powerplants are capable of burning coal, notwithstanding the fact that minor adjustments must be made to the Powerplants before they may burn an alternate fuel (coal) as their primary energy source or that additional pollution control equipment may be necessary to meet air quality requirements.

Other Required Findings

Section 301(b) of FUA requires that prior to the issuance of a final prohibition order ERA must also find that (1) the powerplant has the technical capability to use coal or another alternate fuel as a primary energy source, or it could have such capability without (A) substantial physical modification of the powerplant or (B) substantial reduction in the rated capacity of the powerplant; and (2) it is financially feasible for the powerplant to use coal or another alternate fuel as a primary energy source in such powerplant.

Proposed Prohibition Orders Under Title III of FUA

Subject to the other required findings that ERA must make, ERA hereby proposes to prohibit the Powerplants from burning petroleum or natural gas as their primary energy source.

Description of Prohibition Order Proceedings

Pursuant to Section 301 of FUA, ERA has promulgated Regulations applicable to the issuance of prohibition orders to existing facilities, a summary of which follows:

(1) ERA must initially gather information with respect to the question of technical capability of a powerplant to burn an alternate fuel as its primary energy source. ERA may convene a conference with a utility in accordance with Section 501.32 of the Regulations. If the powerplant has or previously had such capability the utility will be informed that ERA is considering issuance of a proposed prohibition order. In this case, ERA has made the required initial finding for the Powerplants and informed the Utility accordingly.

(2) If a decision is made to issue a proposed prohibition order, ERA must publish its technical capability finding and such proposed prohibition order in the **Federal Register** as required by Section 701(b) of FUA. ERA, having made the required decision in this case, herein publishes the required technical capability finding and proposed prohibition orders. In accordance with Section 301(b) of FUA, a proposed prohibition order is not required to contain, at this point in the proceeding, the other required findings that ERA must make before a final prohibition order can be issued.

(3) In accordance with 501.51(b)(3) of the Regulations, a public comment period of at least three months is to commence after publication of a proposed prohibition order, during which period the utility will be given an opportunity to challenge ERA's initial finding of technical capability contained in a proposed prohibition order. During this three month comment period, the utility is required to furnish ERA with such additional evidence as is necessary to enable ERA to make the other statutory findings which are required to be made by ERA prior to issuance of a final prohibition order. The utility will also be required, during this period, to identify, but not to demonstrate its entitlement to, any exemptions for which the powerplants may qualify.

(4) Subsequent to the end of the initial three month comment period, ERA will issue a notice of whether it intends to proceed with the proposed prohibition orders. Within three months of the issuance of the notice of intention to proceed with the proposed prohibition orders, the owner or operator of the powerplants that may be subject to the proposed prohibition orders may demonstrate that the powerplant would qualify for an exemption if the proposed prohibition order had been established by rule.

(5) Subsequent to the end of the second three month period, ERA will, if it intends to issue the final prohibition orders, prepare and publish a notice of availability of the tentative staff decision.

(6) Under the provisions of Section 701(d) of FUA, any interested person may request a public hearing on the proposed prohibition orders. Under the Regulations, interested persons wishing a hearing must make their request in writing no later than 45 days after publication of the notice of availability of the tentative staff decision. If a hearing is requested, ERA shall provide interested persons with an opportunity to present oral data, views and arguments at a public hearing held in accordance with Subpart C of 10 CFR Part 501.

(7) At the hearing, if any, interested persons will have the opportunity to question the parties about ERA's proposed prohibition orders and tentative staff decision, the utility's showing on any exemptions and rebuttal of ERA's proposed prohibition orders, and ERA's rebuttal to any showing of potential qualification for exemption.

(8) After the hearing, if any, and the second three month comment period, ERA shall determine whether the final prohibition orders will be issued, based upon ERA's review of the entire administrative record. The final prohibition orders, if issued, together with a summary of the basis therefor, will be published in the **Federal Register**. Such orders shall not take effect earlier than sixty days after publication.

COMMENT AND PUBLIC HEARING PROCEDURES

ERA hereby also gives notice of the opportunity to submit written comments, views, and arguments by interested persons regarding these proposed prohibition orders. Comments need not be limited to ERA's technical capability finding, but may include a discussion of all three statutory findings.

The initial comment period shall remain open for a period of three months after publication of these proposed orders in the **Federal Register**, unless reduced at the request of the recipient of the proposed prohibition orders pursuant to 10 CFR Part 501.51(b)(8). Notice of any such change during the time for public comment will be published in the **Federal Register.** Comments should make reference to the docket numbers set forth in this notice and proposed prohibition orders. Comments should address the adequacy and validity of the finding and any other aspects or impacts of the proposed prohibition orders believed to be relevant.

Written comments on the proposed prohibition orders should be directed to Public Hearing Management (Case Nos. 52007–1626–01–82, 52007–1626–02–82, and 52007–1626–03–82), U.S. Department of Energy, Box 4629, Room 3214, 2000 M Street, N.W., Washington, D.C. 20461, and should be received before 4:30 p.m. ninety days after the date of publication of this notice in the **Federal Register.** (July 2, 1980)

In accordance with 10 CFR 501.34, any interested person may request a public hearing on the proposed prohibition orders. The request must include a description of the person's interest in the proposed prohibition orders, an outline of the anticipated content of the presentation to be made at the public hearing, and an address and telephone number where the person requesting the public hearing may be reached.

Comments and other documents submitted to DOE Public Hearing Management should be identified on the outside of the envelope in which they are transmitted and on the document itself with the designation "Proposed Prohibition Orders for the Salem Harbor Powerplant Nos. 1, 2 and 3." Fifteen copies should be submitted. All written comments, all oral presentations, and all other relevant information submitted to or available to ERA will be considered by ERA. Any information or data considered to be confidential by the person furnishing it must be so identified in writing in accordance with 10 CFR 303.9(f). ERA reserves the right to determine the confidential status of the information or data and to treat it in accordance with that determination.

For further information contact:

William L. Webb (Office of Public Information), Economic Regulatory Administration, Department of Energy, 2000 M Street, N.W., Room B–110, Washington, D.C., 20461, (202) 653–4055.

Robert L. Davies (Fuels Conversion-Program Office), Economic Regulatory Administration, Department of Energy, 2000 M Street, N.W., Room 3128L, Washington, D.C., 20461, (202) 653–3649.

G. Randolph Comstock (Office of General Counsel), Department of Energy, 1000 Independence Avenue, S.W., Room 6G–087, Washington, D.C., 20585, (202) 252–2967.

Issued in Washington, D.C., March 28, 1980.

Robert L. Davies,

Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 80–10119 Filed 4–2–80; 8:45 am]

BILLING CODE 6450–01–M

Olin Corp.; Final Action on Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of final action taken.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces final action to accept a Consent Order after consideration of comments received from the public.

DATE: Effective Date: April 3, 1980.

FOR FURTHER INFORMATION CONTACT: Charles L. Croxton, Office of Enforcement, Economic Regulatory Administration, Department of Energy, 2000 M Street, N.W., Room 5108, Washington, D.C. 20461 (Telephone: 202/653–3541)

SUPPLEMENTARY INFORMATION: On February 21, 1980, the Office of Enforcement of the ERA published Notice of a Consent Order which has been executed between Olin Corporation and DOE. With that Notice, and in accordance with 10 CFR § 205.199J(c), the Office of Enforcement invited interested persons to comment on the Consent Order. A press release was issued simultaneously, in conformity with 10 CFR § 205.199J(c). Under the terms of 10 CFR § 205.199J(c), no Consent Order involving sums in excess of $500,000 shall become effective until the DOE publishes Notice of its execution and solicits and considers public comments with respect to its terms. Pursuant to 10 CFR § 205.199J, the Office of Enforcement of the ERA hereby gives Notice of final action taken on the Consent Order.

I. COMMENTS RECEIVED

No comments were received with respect to the terms of the Consent Order.

II. DETERMINATION

The Office of Enforcement of the ERA has determined that the refund procedures as provided in the Consent Order are appropriate under the circumstances of this case.

The Office of Enforcement has concluded that the Consent Order as executed between DOE and Olin Corporation is an appropriate resolution of the compliance proceedings described in the Notice published on February 21, 1980, and hereby gives Notice that the Consent Order is made effective upon publication in the **Federal Register.**

Issued in Washington, D.C. on this 28 day of March, 1980.

Wayne W. Porter,

Deputy Director, Enforcement Program Operations Division, Economic Regulatory Administration.

[FR Doc. 80–10117 Filed 4–2–80; 8:45 am]

BILLING CODE 6450–01–M

Office of Assistant Secretary for International Affairs

Proposed Subsequent Arrangements

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of proposed "subsequent arrangements."

The subsequent arrangements to be carried out involve the approval of the following contracts for furnishing source material to Poland:

Contract Number S–IA–102, 40.5 grams of normal uranium as ore, and 5.9 grams of thorium as monazite sand, to be used to determine uranium and thorium contained in industrial byproducts for environmental protection purposes.

Contract Number S–IA–103, 36.3 grams of normal uranium as ore, and 17.5 grams of thorium as ore, to be used for preparation of standards.

These materials will be exported pursuant to general licenses issued by the Nuclear Regulatory Commission (10 CFR section 110.23).

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of the nuclear material will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than April 18, 1980.

For the Department of Energy.

Dated: March 28, 1980.

Harold D. Bengelsdorf,

Director for Nuclear Affairs, International Nuclear and Technical Programs.

[FR Doc. 80–10115 Filed 4–2–80; 8:45 am]

BILLING CODE 6450–01–M

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement."

The subsequent arrangement to be carried out involves the approval of Contract Number WC–IA–108 for the furnishing of the following source and by-product material to Egypt: tracer solutions containing 10 picocuries each of U–238 plus U–234, U–232, Radium 226, Polonium–210, and natural thorium to be used at the High Institute of public health for cross-calibration of measurement equipment. These materials will be exported pursuant to general licenses issued by the Nuclear Regulatory Commission (10 CFR 10.23 and 110.24).

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of the nuclear material will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than April 15, 1980.

For the Department of Energy.

Dated: March 28, 1980.

Harold D. Bengelsdorf,

Director for Nuclear Affairs, International Nuclear and Technical Programs.

[FR Doc. 80–10116 Filed 4–2–80; 8:45 am]

BILLING CODE 6450–01–M

EXECUTIVE OFFICE OF THE PRESIDENT

Office of Administration

Privacy Act of 1974; Systems of Records

Pursuant to the Privacy Act of 1974 (Pub. L. 93–579, 5 U.S.C. 552a), the Office of Administration hereby publishes for comment its systems of records [1] subject to the Privacy Act.

The Office of Administration was established under Reorganization Plan No. 1 and Executive Order 12028, and began operations January 1, 1978. These systems of records were already in existence in other Executive Office of the President agencies prior to the effective date of the Privacy Act (September 27, 1975), and transferred to the Office of Administration upon its establishment. A waiver of the 60-day advance notice requirement has been requested from the Director, Office of Management and Budget. Notice of these systems of records has been filed with the Speaker of the House, the President of the Senate and the Office of Management and Budget, as required by 5 U.S.C. 552a(o).

Comments on these systems of records should be submitted in writing on or before May 5, 1980, to the Deputy Director, Office of Administration, Old Executive Office Building, Room 200, 17th and Pennsylvania Ave, Washington, D.C. 20503. The systems of records will become effective on May 5, 1980, unless the Office of Administration publishes notice to the contrary.

Sarah T. Kadec,

Deputy Director.

[1] See the Proposed Rules Section of this issue for the proposed access regulations.

Table of Contents

Payroll Records
Travel Records
Library Circulation Records
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Staff Parking Applications and Carpool Registrations
Project Tracking System

OA/EOP/01

SYSTEM NAME:

Payroll Records.

SYSTEM LOCATION:

Office of Administration, New Executive Office Building, 726 Jackson Place, N.W., Washington, D.C. and at the Department of Treasury, U.S. Old Mint Data Center Division, 88 5th Street, San Francisco, California (contractor facility).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All EOP employees payrolled using the Department of the Treasury Payroll/Personnel Information System (TPPIS), effective May 7, 1978. Records on employees of the White House Office are not subject to the Privacy Act; however, these records are maintained in the same manner as those of other EOP agencies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual name, social security number, age, sex, minority group designation, type of appointment, tenure, employment status, grade, step, salary, time worked and on leave, tax withholdings, other deductions, allotments to financial institutions, and other payroll-related items.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 31 U.S.C. 66a, 44 U.S.C. 3109, 3309.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. To generate the payroll for EOP agencies and provide necessary payroll information for agency financial management and accounting.

2. To furnish required payroll information to Federal, State, and local government taxing authorities.

3. To provide input to management information systems, budget and accounting systems, and for required statistical and financial reports to the Office of Personnel Management, the General Accounting Office, Department of the Treasury, and Congress.

4. To provide reports and/or to respond to requests for statistical information necessary for the fulfillment of programs authorized by statute or executive order (the system manager shall delete personal identifying information prior to releasing the records to ensure the individual's anonymity).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The Master File is maintained on disk and magnetic tape at the contractor's facility in San Francisco. Paper records and other magnetic tape records are stored in files in the Office of Administration payroll office and information services offices.

RETRIEVABILITY:

Records are retrieved by name and social security number by EOP employing agency.

SAFEGUARDS:

Records are maintained in locked file cabinets or limited access areas under personal surveillance during working hours and in locked rooms at other times. Master records on disk and computer tape are under the program control of officials at the Department of Treasury computer facility.

RETENTION AND DISPOSAL:

Records are maintained in the Office of Administration payroll office and the contractor's computer facility as long as the individual is employed at EOP. When the employee separates from the EOP, the records are transferred to the National Personnel Records Center in St. Louis, Missouri, where they are retained for 56 years and then destroyed in accordance with FPMR 101–1.14. Payroll records subject to General Accounting Office audit are retained until completion of the audit.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director for Financial Management, Office of Administration, New Executive Office Building, 726 Jackson Place, N.W., Washington, D.C., 20503.

NOTIFICATION PROCEDURE:

Contact Deputy Director, Office of Administration, 726 Jackson Place NW., Washington, D.C. 20503.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individuals on whom records are maintained. Additional information is added from payroll transactions.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

OA/EOP/02

SYSTEM NAME:

Travel records.

SYSTEM LOCATION:

Office of Administration, New Executive Office Building, 726 Jackson Place, N.W., Washington, D.C. 20503.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of EOP and other authorized individuals who travel at government expense on official business for EOP agencies. Records in this system on employees of the White House Office are not subject to the Privacy Act; however, they are maintained in the same manner as those of other EOP agencies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Approved travel authorizations, requests for travel advances, vouchers submitted by individuals, memorandums of approval for special conveyances or actual expenses in lieu of per diem, and receipts required by Federal Travel Regulations (FPMR 101–7).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 66a, 44 U.S.C. 3101, 3102, 3309, and General Accounting Office and General Services Administration policy and procedures.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

1. To document authorization and reimbursement for official travel of individuals.

2. To furnish financial and statistical information to officers and employees of EOP agencies for performance of their official duties.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records for the current and preceding two fiscal years are filed in cabinets in the accounting office. Other records are stored in the Federal Records Center.

RETRIEVABILITY:

Records are retrieved by individual name within each EOP agency and by fiscal year.

SAFEGUARDS:

Records are maintained in file cabinets under staff surveillance during working hours and in a locked room at other times.

RETENTION AND DISPOSAL:

Records are maintained in conformity with the audit schedule of the General Accounting Office and the requirements of the General Services Administation. Non-current records are destroyed after 3 years.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director for Financial Management, Office of Administration, New Executive Office Building, 726 Jackson Place, N.W., Washington, D.C. 20503.

NOTIFICATION PROCEDURE:

Contact Deputy Director, Office of Administration, 726 Jackson Place, NW., Washington, D.C. 20503.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Content of the record is obtained from the individual to whom the information pertains. Additional information may be added by travel office staff as a result of processing and auditing the claim for reimbursement.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

OA/EOP/03

SYSTEM NAME:

Library Circulation Records.

SYSTEM LOCATION:

Executive Office of the President Library, New Executive Office Building, 726 Jackson Place, N.W. Washington, D.C. 20503.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of EOP and other authorized individuals who have borrowed materials from the Library.

CATEGORIES OF RECORDS IN THE SYSTEM:

Titles and other identifying data on materials borrowed from the Library; room number, agency and sub-organization, and telephone number of the borrower; and the scheduled return date for each item borrowed.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Property and Administrative Services Act, Title II, Sec. 202(b)(1), 40 U.S.C. 483(b)(1).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

To locate Library materials in circulation, and to control and inventory Library materials loaned. Disclosure is limited to Library staff and officers and other employees of EOP agencies in connection with the performance of official duties.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained on magnetic tape/disk and periodically in hard copy for instant reference at the Library circulation desk.

RETRIEVABILITY:

Records are arranged alphabetically by the last name of the borrower, by title of item borrowed, by organization employing the borrower, and by order of input into the system.

SAFEGUARDS:

Hard copy records are under personal surveillance by Library staff during working hours and in a locked area at other times. The master records on magnetic tape/disk are under the program control of Office of Administration data processing officials.

RETENTION AND DISPOSAL:

Records are retained on individual Library loans only until the material is returned, and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, for Information Management and Services, Office of Administration, New Executive Office Building, 726 Jackson Place NW., Washington, D.C. 20503.

NOTIFICATION PROCEDURE:

Contact Deputy Director, Office of Administration, 726 Jackson Place NW., Washington, D.C. 20503.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Information is obtained from individual who borrows materials and

from physical examination of materials borrowed.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

OA/EOP/04

SYSTEM NAME:

Researcher Request Records.

SYSTEM LOCATION:

Office of Administration, New Executive Building, 726 Jackson Place, NW., Washington, D.C. 20503.

CATEGORIES OF RECORDS COVERED BY THE SYSTEM:

Initial letter submitted by individuals who ask to examine official records of EOP agencies (except those records of the President, the White House Office, and the Office of the Vice President). The letter includes a statement of the nature and purpose of the research, and the individual's occupation, home address and place of employment. Brief descriptions and locations of records reviewed, examined, and copied are also maintained in the record. Copies of letters submitted under the Freedom of Information Act are also included in the system.

CATEGORIES OF INDIVIDUALS IN THE SYSTEM:

Individuals who have requested to examine official records or reference materials of EOP agencies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 552; 44 U.S.C. 3101, 3103, 3105, 3106.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To document researcher access to the offical records of the EOP agencies, and to furnish information to officers and employees of the EOP agencies in connection with the performance of their official duties. Other information may also be required to compile statistical data for the annual report to the Congress on activities under the Freedom of Information Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in files and on index cards in the Executive Office of the President Information Center.

RETRIEVABILITY:

By name of researcher and cross-indexed by record reviewed or research subject. Access is restricted to the Records Management Staff.

SAFEGUARDS:

The records are under personal surveillance during working hours and in a locked area at other times.

RETENTION AND DISPOSAL:

Records are retained for eight years, and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director for Information Management and Services, Office of Administration, New Executive Office Building, 726 Jackson Place, NW., Washington, D.C. 20503.

NOTIFICATION PROCEDURE:

Contact Deputy Director, Office of Administration, 726 Jackson Place NW., Washington, D.C. 20503.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Personal information is received from the individual to whom the record pertains.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

OA/EOP/05

SYSTEM NAME:

Office of Administration, staff parking application and carpool registration file.

SYSTEM LOCATION:

Office of Administration, Administrative Services Division, New Executive Office Building, 726 Jackson Place NW., Washington, D.C. 20503.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

OA employees who have applied for parking permits during the year; OA employees who are the principal members (drivers) of a carpool and have received special carpool parking permits; and, the riders in the carpool.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains completed OA forms (1) "Request for Parking Permit," submitted by OA employees who desire a parking permit. The form contains the following information about the applicant: name, office/division, room number, office phone, work address, make of car, license number, home phone; (2) "Carpool Registration," submitted by employees who obtained carpool parking permits. The form contains the following information about the principal carpool member; name, office/division, room number, office phone, office address, car make, license, home phone. The form also contains the following information about the carpool riders; name, home address, work location and office phone.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

41 CFR Temporary Regulation D–65, Office of Management and Budget Circular A–118.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records are used by officials and employees of OA in connection with their official duties, which include managing the OA employee parking spaces.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Forms are maintained in file folders and stored in a metal file cabinet.

RETRIEVABILITY:

Records are kept in alphabetical order by individual name (for carpool registration forms, access is by principal members name only). Access is limited to the Administrative Services Division Staff of OA.

SAFEGUARDS:

Only Administrative Services Division staff have access to these records, which are under visual surveillance during working hours, and in a locked area other times.

RETENTION AND DISPOSAL:

The forms are maintained for one (1) year following the close of the parking year (September 30).

SYSTEM MANAGER(S) AND ADDRESS:

Director for Administrative Services, Office of Administration, New Executive Office Building, 726 Jackson Place NW., Washington, D.C. 20503.

NOTIFICATION PROCEDURE:

Contact Deputy Director, Office of Administration, 726 Jackson Place NW., Washington, D.C.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Content of records are obtained from the individuals to whom the record pertains.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

OA/EOP/06

SYSTEM NAME:

Project Tracking System.

SYSTEM LOCATION:

Office of Administration, New Executive Office Building, 726 Jackson Place NW., Washington, D.C. 20503.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Office of Administration who have been assigned responsibility for one or more work projects which are monitored by the system.

CATEGORIES OF RECORDS IN THE SYSTEM:

Project number; project title; issue date; completion date; office for which the project is undertaken; objective of the project; name and division of the employee primarily responsible for the project; project milestones; authority/justification for the project; data on staff time spent on each project; date on costs of projects.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

ROUTINE USES OF RECORDS IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To monitor the progress of projects assigned to Office of Administration employees. To generate agency internal management reports. Disclosure is limited to supervisory staff, i.e., the Director, Deputy Director and Division Heads, in connection with the performance of their official duties.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained on magnetic tape/disk and are periodically produced on hard copy for reporting purposes.

RETRIEVABILITY:

Records are arranged alphabetically by the surname, and division of the person primarily responsible for each project, by project title, by client, and numerically by project number and by date.

SAFEGUARDS:

Hard copy records are under the personal surveillance of Office of Administration staff during working hours and in a locked area at other times. The master file is on magnetic tape/disk in the Office of Administration Computer Facility. Access to the system is controlled by a security level code and individually assigned passwords.

RETENTION AND DISPOSAL:

Hard copy records are destroyed when no longer needed for administrative purposes. Records are purged from the master file two years after the project is completed.

SYSTEM MANAGER(S) AND ADDRESS:

Staff Assistant to the Director, Office of Administration, 726 Jackson Place NW., Washington, D.C. 20503.

NOTIFICATION PROCEDURE:

Contact: Deputy Director, Office of Administration, 726 Jackson Place NW., Washington, D.C. 20503.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Information is obtained from the agency senior staff who assign projects and from the individual employees to whom the projects are assigned.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 80-10153 Filed 4-2-80; 8:45 am]

BILLING CODE 3115-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

U.S. Fire Administration

Board of Visitors for the National Fire Academy; Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), announcement is made of the following committee meeting:

Name: Board of Visitors for the National Fire Academy.
Dates of meeting: April 24-25, 1980.
Place: Conference Room, Administration Building (Building E), National Fire Academy, Emmitsburg, Maryland.
Time: 9:00 a.m. to 5:00 p.m.
Proposed agenda:
April 24, 1980: Introductory remarks; Organizational Responsibilities of Board of Visitors; Annual Report to the Administrator; Outreach Program; Possible Committee Considerations: Target Students, Curriculum and Program Offerings for 1980, Priorities of Course Development, Outreach, Budget 1981, Facilities; Miscellaneous Considerations; Establishement of Proposed Future Meeting Dates.
April 25, 1980: Uncompleted Agenda Items; Tour of Facilities; Administrative Items.

The meeting will be open to the public with approximately 20 seats available on a first come first serve basis. Members of the general public who plan to attend the meeting should contact Mr. Clem R. Lakin, National Fire Academy, Route 1, Box 10A, Emmitsburg, Maryland 21727 (phone 301/447-6771) on or before April 17, 1980.

Minutes of the meeting will be prepared by the Board and will be available for public viewing in the Superintendent's Office, Administration Building, National Fire Academy, Emmitsburg, Maryland. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: March 24, 1980.

Gordon Vickery,

Administrator, U.S. Fire Administration.

[FR Doc. 80-10061 Filed 4-2-80; 8:45 am]

BILLING CODE 6718-04-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Alcohol, Drug Abuse, and Mental Health Administration

National Advisory Council on Alcohol Abuse and Alcoholism; 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 body scheduled to assemble during the month of April 1980.

National Advisory Council on Alcohol Abuse and Alcoholism

April 7, 1980; 10:00 a.m.—Open meeting, Hubert H. Humphrey Building, 200 Independence avenue SW., Washington, D.C.
Contact: Mr. James Vaughan, Room 16-C-06, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-3387.
Purpose: The Council advises the Secretary, Department of Health, Education, and Welfare regarding policy direction and program issues of national significance in the area of alcohol abuse and alcoholism. Reviews all grant applications in terms of scientific merit and coherence with Department policies, and makes recommendations to the Secretary with respect to approval and amount of award.
Agenda: To discuss with the Surgeon General the joint HEW-Treasury report to the President and Congress required by Pub. L. 96-180 with respect to informing the general public of the health hazards associated with alcoholic beverages.

This notice is late because of the uncertainty of whether the meeting would be open to the public or closed and the Federal official was unable to get confirmation until March 28, 1980.

Substantive program information may be obtained from the contact person listed above. The NIAAA Public Affairs Office will furnish upon request summaries of the meeting and a roster of Committee members. Contact Mr. Harry Bell, Associate Director, Office of Public Affairs, NIAAA, Room 11A–17, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–3306.

Dated: March 31, 1980.

Elizabeth A. Connolly,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 80–10121 Filed 4–2–80; 8:45 am]

BILLING CODE 4110–88–M

Interagency Committee on Federal Activities for Alcohol Abuse; 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 April 1980.

Interagency Committee on Federal Activities for Alcohol Abuse and Alcoholism

April 29, 1980; 9:30 a.m.—Open meeting; Conference Room 800, PH, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. Contact: Mr. James Vaughan, Room 16–C–06, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–3887.

Purpose: The Interagency Committee on Federal Activities for Alcohol Abuse and Alcoholism (1) evaluates the adequacy and technical soundness of all Federal programs and activities which relate to alcohol abuse and alcoholism and provides for the communication and exchange of information necessary to maintain the coordination and effectiveness of such programs and activities, and (2) seeks to coordinate efforts undertaken to deal with alcohol abuse and alcoholism in carrying out Federal health, welfare, rehabilitation, highway safety, law enforcement, and economic opportunity laws.

Agenda: The meeting will consist of a discussion of working group activities, the functions of the Interagency Committee and the joint HEW-Treasury report to the President and the Congress required by P.L. 96–180 with respect to informing the general public of the health hazards associated with alcoholic beverages.

Substantive program information may be obtained from the contact person listed above. The NIAAA Public Affairs Office will furnish upon request summaries of the meeting and a roster of Committee members. Contact Mr. Harry Bell, Associate Director, Office of Public Affairs, NIAAA, Room 11A–17, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–3306.

Dated: March 27, 1980.

Michele W. Harvey,

Deputy Associate Administrator for Extramural Programs, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 80–10064 Filed 4–2–80; 8:45 am]

BILLING CODE 4110–88–M

Office of Education

Community Education Program; Extension of closing date for submission of applications for fiscal year 1980

AGENCY: Office of Education, HEW.

ACTION: Extension of Closing Date for Submission of Applications for Fiscal Year 1980.

SUMMARY: This notice is to inform clients that the March 10, 1980 closing date for submission of applications under the Community Education Program is extended. The new closing date is June 30, 1980. The notice of closing date for transmittal of applications for the Community Education Program was published in the **Federal Register** on August 23, 1979. That notice directed clients to prepare the applications in accordance with the final regulations that were planned to be published in December, 1979. Unfortunately, the final regulations could not be published when planned. Therefore, the closing date is extended to give applicants sufficient time to complete their applications based on the final regulations published in this issue of the **Federal Register.**

SUPPLEMENTARY INFORMATION: Authority for this program is contained in Title VIII of the Elementary and Secondary Education Act, as amended by the Education Amendments of 1978 (Pub. L. 95–561).

This program issues awards to local educational agencies, State educational agencies, other public agencies, nonprofit private organizations, and institutions of higher education.

The purpose of the awards is to plan, establish, expand, and operate community education programs; promote efficient use of school facilities; encourage effective delivery of social services; and train persons involved in community education.

Program information and mailing instructions for applications are repeated below.

Applications Delivered by Mail

An application sent by mail must be addressed to the U.S. Office of Education, Application Control Center, Attention: 13.563, Washington, D.C. 20202.

An application must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Commissioner of Education.

If an application is sent through the U.S. Postal Service, the Commissioner does not accept either of the following as proof of mailing: (1) a private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications Delivered by Hand

An application that is hand delivered must be taken to the U.S. Office of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, S.W., Washington, D.C..

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand delivered will not be accepted after 4:30 p.m. on the closing date.

Program Information

The final rules governing the Community Education Program are published in this issue of the **Federal Register.** Certain changes were made between the proposed regulations and the final regulations. Therefore, an applicant should review the final regulations, particularly the evaluation criteria in Subpart D of appropriate category, before preparing an application.

Information regarding funding categories and criteria for judging applications is contained in the regulations. In general, priority is given to applications which are designed to serve as exemplary models or which build an agency's long-range capacity to maintain Community Education.

Discretionary grants will be made in the following categories:

(1) grants to LEAs to plan, establish, expand and operate exemplary projects with potential for broad replication;

(2) grants to SEAs to (a) conduct State-level activities for furthering community education, and (b) provide technical assistance to LEAs in the development of community education programs;

(3) grants to other public agencies and nonprofit private organizations for (a) training a particular national, regional, or statewide group interested in community education or in the coordinated delivery of community and human services in schools and other public agencies or developing working relationships between two or more of these groups; or (b) developing, testing and disseminating exemplary models of local activities to promote improved coordination of community and human services in schools and other public facilities.

(4) grants to IHEs to provide training to persons who are or will be engaged in community education programs. The final regulations state that the Commissioner may annually establish priorities among training areas. During FY 80, priority is given to the following training areas:

(a) *(Section 163d.11(a)(2) of the final regulations)* Training of SEA community education leaders in managing a State program and in providing technical assistance to local districts throughout their State. (This category is designed to serve a large number of SEAs throughout the Nation.)

(b) *(Sections 163d.11(a)(4) of the final regulations)* Activities to disseminate information about national training and to bring together different organizations and institutions providing training to persons in community education. (The project might establish among trainers a regular method of communication and exchange of innovative methods and practices; create a focus for the discussion of national training needs in community education; assess and create a focus for the discussion of national training needs in community education; assess and create discussion on currently available training materials and programs; and provide a directory of national training opportunities and resources.)

(c) *(Section 163d.11(a)(5) of the final regulations)* Training by statewide, regional, or national consortia composed of a variety of skilled trainers—(i) to provide interdisciplinary training to persons interested in community education; or (ii) to provide training on new methods of collaboration among agencies and institutions providing services in community education.

Available Funds

The appropriation for the Community Education Program in FY 1980 to support new projects is $3,138,000. Of this amount $1,000,000 is available for grants to LEAs, $1,138,000 is available for grants to SEAs, $500,000 is available to public agencies and nonprofit organizations, and $500,000 is available for grants to IHEs. During FY 1979, the average amounts of grants were: in the LEA category, $37,941; in the SEA category, $51,993; and the IHE category, $63,810. No minimum or maximum amounts are set.

These estimates do not bind the U.S. Office of Education except as may be required by the applicable statute and regulations. All grants will be new awards. A current grantee may apply for a new award on the same basis as an applicant not previously funded. The Program will emphasize funding projects of one year in duration. Because of limited funding, only those projects providing strong justification and scoring high during the grants review process will be considered for funding beyond one year, in accordance with EDGAR.

The grantee's share of the costs of grants under Sections 808 and 809 of the Community Schools and Comprehensive Community Education Act is 10 percent for Fiscal Year 1980.

Application Forms

Application forms and program information packages are expected to be ready for mailing by May 6, 1980. They may be obtained by writing to the Community Education Program, U.S. Office of Education (Room 5622, Regional Office Building 3), 400 Maryland Avenue, S.W., Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. The Commissioner strongly urges that the narrative portion of the application not exceed 50 pages in length. The Commissioner further urges that applicants not submit information that is not requested.

Applicable Regulations

Regulations applicable to this program include the following:

(a) Regulations governing the Community Education Program (45 CFR Part 163), published in this issue of the **Federal Register.**

(b) The Education Division General Administrative Regulations (EDGAR) (45 CFR Parts 100a and 100c) published in this issue of the **Federal Register.**

Further Information

For further information contact Mr. Ron Casaldi, Acting Director, Community Education Program, U.S. Office of Education (Room 5622, Regional Office Building 3), 400 Maryland Avenue, S.W., Washington, D.C. 20202, Telephone: (202) 245–0691.

(Catalog of Federal Domestic Assistance Number 13.563, Community Education Program)

Dated: March 21, 1980.

William L. Smith,

Commissioner of Education.

[FR Doc. 80–9661 Filed 4–2–80; 8:45 am]

BILLING CODE 4110–02–M

Cooperative Education Program; Closing Date for Transmittal of Applications for Demonstration Projects for Fiscal Year 1980

Applications are invited for new demonstration projects under the Cooperative Education Program.

Authority for this program is contained in Title VIII of the Higher Education Act of 1965, as amended. Section 803 of the legislation authorizes funding of "* * * projects demonstrating or exploring the feasibility or value of innovative methods of cooperative education."

(20 U.S.C. 1133b)

Demonstration grants will be awarded to assist institutions of higher education located primarily in large urban areas in developing and establishing comprehensive cooperative education programs where all or nearly all students would have the opportunity to alternate their academic study with paid work experiences which are related to their academic program.

Closing Date for Transmittal of Applications

An application for a demonstration grant must be mailed or hand delivered by May 22, 1980. A separate notice of closing date has been issued for administration, research, and training grants.

Applications Delivered by Mail

An application sent by mail must be addressed to the U.S. Office of Education, Application Control Center, Attention: 13.510, Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Commissioner of Education.

If an application is sent through the U.S. Postal Service, the Commissioner does not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications Delivered by Hand

An application that is hand delivered must be taken to the U.S. Office of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th & D Streets, S.W., Washington, D.C.

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C., time) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand delivered will not be accepted after 4:30 p.m. on the closing date.

Available funds

It is expected that approximately $15,000,000 will be available in FY 1980 for all types of grants awarded by the program.

Of the $15,000,000, approximately $2,000,000, to $2,500,000 will be available to support 2 or 3 demonstration projects. Awards will be for up to approximately $1,000,000 each and will be obligated from a single year's appropriation. Funds for these demonstration grants will be expended over a three-year period to provide institutions sufficient time to plan and develop comprehensive cooperative education programs.

These estimates do not bind the U.S. Office of Education except as may be required by the applicable statute and regulations.

Application Forms

Application forms and program information packages were mailed to all eligible institutions of higher education on October 23, 1979. Additional copies may be obtained from the Cooperative Education Branch, U.S. Office of Education (Room 3053, Regional Office Building 3), 7th and D Streets, S.W. Washington, D.C. 20202. Telephone: 202–245–2484.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package, the Commissioner strongly urges that the narrative portion of the application not exceed *25* pages. The Commissioner further suggests that applicants not submit information that is not requested.

Applicable Regulations

Regulations applicable to this program include the following:

(a) Regulations governing the Cooperative Education Program (45 CFR Part 182) published in the **Federal Register** on May 2, 1978, and revised in today's issue of the **Federal Register;** and

(b) General Provisions Regulations for the Office of Education Programs (45 CFR Parts 100 and 100a).

Note.—See the final Education Division General Administrative Regulations (EDGAR) published as Part II in this issue of the **Federal Register.** When EDGAR becomes effective, it will supersede the General Provisions Regulations for the Office of Education programs.

If EDGAR takes effect before grants are made under this program, those grants will be subject to the following provisions of EDGAR:

Subpart A (General; Subpart E (What Conditions Must Be Met by a Grantee?)
Subpart F (What Are The Administrative Responsibilities of A Grantee?) and
Subpart G (What Procedures Does The Education Division Use To Get Compliance?)

Further Information

For further information contact Mr. Morris Brown, Chief, Cooperative Education Branch, Division of Training and Facilities/BHCE, U.S. Office of Education (Room 3053, Regional Office Building 3), 7th and D Streets, S.W., Washington, D.C. 20202. Telephone: (202) 245–2146 or 245–2484.

(20 U.S.C. 1133–1133b)

(Catalog of Federal Domestic Assistance No. 13.510; Cooperative Education Program)

Dated: February 5, 1980.

William L. Smith

Commissioner of Education.

[FR Doc. 80-9662 Filed 4-2-80; 8:45 am]

BILLING CODE 4110-02-M

Emergency Adult Education Program for Indochina Refugees; Closing Date for Transmittal of Applications for Fiscal Year 1980

AGENCY: Office of Education, HEW.

ACTION: Notice of Closing Date for Transmittal of Applications for Fiscal Year 1980.

SUMMARY: Applications are invited for new projects under the Emergency Adult Education Program for Indochina Refugees. The closing date is June 18, 1980.

SUPPLEMENTARY INFORMATION:

Authority for this program is contained in section 317 of the Adult Education Act (Pub. L. 91–230), as amended.

(20 U.S.C. 1211b)

Under the Emergency Adult Education Program for Indochina Refugees, grants are awarded to State educational agencies and local educational agencies.

The purposes of the grants are to enable adult Indochina refugees to acquire basic skills necessary to function in American society and to contribute to the employability of adult Indochina refugees through development of basic educational and occupational skills.

Applications Delivered by Mail

An application sent by mail must be addressed to the U.S. Office of Education, Application Control Center, Attention: 13.579, Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(a) A Legibly dated U.S. Postal Service postmark.

(b) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(c) A dated shipping label, invoice, or receipt from a commercial carrier.

(d) Any other proof of mailing acceptable to the U.S. Commissioner of Education.

If an application is sent through the U.S. Postal Service, the Commissioner does not accept either of the following as proof of mailing:

(a) A private metered postmark; or

(b) A mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered, certified, or at least first-class mail. Each late applicant will be notified that its application will not be considered.

Applications Delivered by Hand

An application that is hand delivered must be taken to the U.S. Office of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, S.W., Washington, D.C.

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C., time) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand delivered will not be accepted after 4:30 p.m. on the closing date.

Program Information

Specific information regarding eligible activities under the special adult education program for Indochina refugees is contained in the regulations and in the program information package. A grant period is normally for twelve months but in no event shall it exceed eighteen months.

Available Funds

Approximately $2.5 million is anticipated for the Emergency Adult Education Program for Indochina Refugees.

It is estimated that these funds could support 25–30 projects. Grants will be awarded before September 30, 1980, for operation continuing into fiscal year 1981. No minimum or maximum amounts have been predetermined since funds required will vary according to the number of persons to be served and the types of services to be provided by the state or local educational agency.

These estimates do not bind the U.S. Office of Education except as may be required by the applicable statute and regulations.

Application Forms

Application forms and program information packages are expected to be ready for mailing by April 18, 1980. They may be obtained by writing to the Division of Adult Education, U.S. Office of Education, 400 Maryland Avenue, S.W. (ROB–3, Room 5056), Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. The Commissioner strongly urges that the narrative portion of the application not exceed 15 pages in length. The Commissioner further urges that applicants not submit information that is not requested.

Special Procedures

Concurrently with application submission to the U.S. Office of Education, each local educational agency applicant shall submit a copy of its application to its respective State educational agency. The Commissioner does not approve an application for a grant under the Emergency Adult Education Program for Indochina Refugees unless the State educational agency (for the State in which that applicant is located) assures the Commissioner that the proposed activity will not duplicate existing and available (Federal and non-Federal) adult education programs that meet the special needs of adult Indochina refugees. (See § 166c.222(b) of the final regulations.)

Applicable Regulations

Regulations applicable to this program include the following:

(a) Regulations governing the Emergency Adult Education Program for Indochina Refugees (45 CFR Part 166c) published in this issue of the **Federal Register.**

(b) The Education Division General Administrative Regulations (EDGAR) (45 CFR Parts 100a and 100c), except for the selection criteria (Subpart D, Part 100a.200–.206) published in this issue of the **Federal Register.**

Application Specifications

An applicant MUST forward one original and two copies of the application to the Application Control Center of the U.S. Office of Education.

Further Information

For further information, contact Mr. Paul V. Delker, Director, Division of Adult Education, U.S. Office of Education, 400 Maryland Avenue, S.W. (ROB–3, Room 5056), Washington, D.C. 20202, Telephone: (202) 245–2278.

(20 U.S.C. 1211b)

(Catalog of Federal Domestic Assistance (CFDA) No. 13.579, Emergency Adult Education Program for Indochina Refugees)

Dated: February 6, 1980.

William L. Smith,

Commissioner of Education.

[FR Doc. 80-9660 Filed 4-2-80; 8:45 am]

BILLING CODE 4110-02-M

Office of Health Research, Statistics, and Technology

Filing of Annual Reports of Federal Advisory Committees

Notice is hereby given that pursuant to Section 13 of Public Law 92–463, the Annual Report for the following Office of Health Research, Statistics, and Technology Federal Advisory Committee has been filed with the Library of Congress:

National Council on Health Care Technology

Copies are available to the public for inspection at the Library of Congress, Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, S.E. Washington, D.C., Telephone (202) 287–6310, or weekdays between 9:00 a.m. and 4:30 p.m. at the Department of Health, Education, and Welfare, Department Library, North Building, Room 1436, 330 Independence Avenue, S.W., Washington, D.C. 20201, Telephone (202) 245–6791. Copies may be obtained from Ms. Sharon Paino, Executive Secretary for the National Council on Health Care Technology Committee, Room 17A–29, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–1820.

Dated: March 27, 1980.

Wayne C. Richey, Jr.,

Associate Director for Program Support, Office of Health Research, Statistics, and Technology.

[FR Doc. 80-10122 Filed 4-2-80; 8:45 am]

BILLING CODE 4110-85-M

Office of the Secretary

Ethics Advisory Board; Meeting

Notice is hereby given that the Ethics Advisory Board will hold a meeting on Friday, April 18, 1980 and, if it should become necessary on Saturday, April 19 as well. The meeting will take place in Room 800 of the Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. The meeting will begin at 9 a.m. and be open to the public subject to limitations of available space.

The agenda for the meeting will be the review and final approval of two reports: (1) Regarding a request for limited exemption from the Freedom of Information Act by the Center of Disease Control, and (2) Regarding a request for limited exemption from the Freedom of Information Act by the National Institutes of Health.

Requests for information should be directed to Ms. Amanda MacKenzie, Westwood Building, Room 125, 5333 Westbard Avenue, Bethesda, Maryland, 20016, telephone, 301–496–7776.

Dated: March 20, 1980.

Barbara Mishkin,

Staff Director, Ethics Advisory Board.

[FR Doc. 80-10086 Filed 4-2-80; 8:45 am]

BILLING CODE 4110-08-M

Secretary's Advisory Committee

On the Rights and Responsibilities of Women; Meeting

The Secretary's Advisory Committee on the Rights and Responsibilities of Women, which is established to provide advice to the Secretary of Health, Education, and Welfare on the impact of the policies, programs and activities of the Department on the status of women will meet on Thursday, April 24, 1980, from 10:00 a.m. to 5:00 p.m., and on Friday, April 25, 1980, from 10:00 a.m. to 3:00 p.m., in Room 303-A, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. The agenda will include health and family policy issues.

Further information on the Committee may be obtained from: Cheryl Yamamoto, Executive Secretary, telephone 202-245-8454. These meetings are open to the public.

Dated: March 28, 1980.

Cheryl Yamamoto,

Executive Secretary, Secretary's Advisory Committee on the Rights and Responsibilities of Women.

[FR Doc. 80-10085 Filed 4-2-80; 8:45 am]

BILLING CODE 4110-12-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Arizona; Proposed Wilderness Designation of Instant Study Areas for the Arizona Strip District, Northern Mohave and Coconino Counties, Ariz.; Public Hearings To Receive Comments on the Draft Suitability Report and Draft Environmental Impact Statement

Pursuant to section 3(d)(1)(c) of the Wilderness Act of 1964, section 603 of the Federal Land Policy and Management Act of 1978 and section 102 (2)(c) of the National Environmental Policy Act of 1969, the Bureau of Land Management will hold Public Hearings to receive comments on the draft suitability report and draft environmental impact statement concerning the proposed wilderness designation of instant study areas for the Arizona Strip District in Northern Mohave and Coconino Counties, Arizona.

The Bureau of Land Management invities written comments on the draft document to be submitted within 45 days at the Environmental Protection Agency's notice to be published in the **Federal Register** on or about April 25, 1980. The comments are to be submitted to the State Director, Bureau of Land Management, 2400 Valley Bank Center, Phoenix, Arizona 85073.

A limited number of copies are available upon request to the State Director at the above address.

Public reading copies will be available for review at the following locations:

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

Arizona State Office, Bureau of Land Management, 2400 Valley Bank Center, Phoenix, Arizona 85073. Telephone (602) 261-3706.

Utah State Office, Bureau of Land Management, 136 E. Temple, Salt Lake City, Utah 84111. Telephone (801) 524-4227.

Arizona Strip District Office, Bureau of Land Management, 196 E. Tabernacle, St. George, Utah 84770. Telephone (801) 673-3545.

Cedar City District Office, Bureau of Land Management, 1579 N. Main, Cedar City, Utah 84720. Telephone (801) 586-2801.

Kanab Resource Area Office, Bureau of Land Management, 320 North First East, Kanab, Utah 84741. Telephone (801) 644-2672.

Oral and written comments will also be received at formal public hearings to be held in the following cities:

Salt Lake City, Utah, Salt Palace, Room 220, May 5, 1980, 7:30 p.m.

Kanab, Utah, BLM Area Office, 320 North First East, May 6, 1980, 7:30 p.m.

St. George, Utah, Four Season Convention Center, 747 E. St. George Blvd., May 7, 1980, 7:30 p.m.

Phoenix, Arizona, Maricopa County Board of Supervisor's Auditorium, 111 S. 3rd Avenue, May 8, 1980, 7:30 p.m.

A Hearing Officer will preside over the public hearings. Witnesses presenting oral comments should limit their testimony to ten (10) minutes. Written requests to testify orally should be sent to the District Manager, Arizona Strip District Office, 196 E. Tabernacle, St. George, Utah 84770.

Comments received on the draft environmental impact statement and draft suitability report, whether written or oral, will be given equal consideration during the preparation of the final document.

Tom Allen,

Acting State Director.

March 27, 1980.

[FR Doc. 80-10097 Filed 4-2-80; 8:45 am]

BILLING CODE 4310-84-M

[Survey Group 658]

Colorado: Filing of Plats of Survey

March 25, 1980.

Plats of survey of the following described lands accepted January 28, 1980 will be officially filed in the Colorado State Office, Bureau of Land Management, Denver, Colorado effective May 30, 1980.

Sixth Principal Meridian

T. 9 S., R. 90 W.

This plat represents a dependent resurvey of a portion of the east boundary and the survey of a portion of the subdivisional lines.

T. 10 S., R. 90 W.

These plats represent a dependent resurvey of a portion of the second standard parallel south, a portion of the east boundary, a portion of M.S. No. 5902, St Louis Placer, and the survey of the north and west boundaries and a portion of the subdivisional lines.

[Survey Group 407]

Plats of survey of the following described lands accepted February 14, 1980 will be officially filed in the Colorado State Office, Bureau of Land Management, Denver, Colorado effective May 30, 1980.

Sixth Principal Meridian

T. 10 S., R. 84 W.

These plats represent a dependent resurvey of a portion of the second standard parallel south, along the south boundary of Township 20 South, through Range 84 West; the west boundary and the subdivisional lines and the extension survey of the subdivisional lines; the dependent resurvey of certain boundaries of non-conforming claims; the survey of the subdivision of certain sections; the resurvey of a portion of the Aspen Townsite; and the dependent resurvey of certain boundaries of mineral surveys.

T. 10 S., R. 85 W.

These plats represent an extension survey of a portion of the subdivisional lines, the dependent resurvey of a portion of the subdivisional lines, the subdivision of certain sections, a portion of the Aspen Townsite, certain boundaries of mineral surveys.

These surveys were executed to meet certain administrative needs of the Bureau.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, Room 700,

Colorado State Bank Building, 1600 Broadway, Denver, Colorado 80202.

George C. Hinton,

Chief, Public Affairs.

[FR Doc. 80-10093 Filed 4-2-80; 8:45 am]

BILLING CODE 4310-84-M

Decker-Birney, South Rosebud, and Coalwood Management Framework Plans; Invitation to Comment

Notice is hereby given that the Miles City District, Bureau of Land Management (BLM), Miles City, Montana, invites public comments on draft amendments to portions of the Decker-Birney, South Rosebud and Coalwood Management Framework Plans (MFPs). These amendments were prepared to make relevant portions of the MFPs reflect, as completely as possible, existing statutory requirements and policies and to continue to carry out the requirements of the Federal Lands Review mandated by Section 522(c) of the Surface Mining Control and Reclamation Act (SMCRA). Dates of the comment period are April 1, 1980, through May 20, 1980.

Background standards and procedures for this MFP review and amendment preparation are contained in **Federal Register** Notice FR Vol. 44, No. 140, 42584–42662 of July 19, 1979, and FR Vol. 44, 153, 46386–46401 of August 7, 1979. The standards for this review are also discussed in a final environmental statement describing the Secretary of Interior's preferred coal program and alternatives, which was released in April, 1979.

The subject area is within the Powder River Coal Region and covers portions of Big Horn, Rosebud, Custer, Treasure, and Powder River Counties in Montana. It is adjacent to the Ashland Division of the Custer National Forest, the Northern Cheyenne and Crow Indian Reservations, and the State of Wyoming.

The plan draft amendments identify areas acceptable for further consideration for coal leasing, and are situated within those areas previously found acceptable for leasing in the original MFPs. The amendments also identify data which must be supplemented in the future prior to a final determination of acceptability. The amendments do not include decisions to lease any area for coal.

Any federal coal identified as acceptable for further consideration for leasing may be included in the first Powder River Coal Region (Montana and Wyoming) activity plan and evironmental impact statement. The Secretary of Interior has announced a preliminary Powder River Coal Regional leasing target of 776 million tons for 1982. To achieve this goal, preliminary lease tract delineation and ranking procedures will start in the summer of 1980 and the subject MFP amendments must be completed by July, 1980.

The plan draft amendments and draft environmental assessment record (EAR) have been prepared by an interdisciplinary team and in consultation with appropriate state and federal agencies as well as qualified surface owners over federally reserved coal. The amendment drafts primarily involve the application of the Secretary of Interior's unsuitability criteria and consideration of qualified surface owner views. The drafts contain narratives, tables and maps which display those areas:

(1) To which no criteria applies;

(2) To which a criterion or criteria cannot be applied pending collection of additional data;

(3) To which a criterion or criteria apply;

(4) To which a criterion or criteria apply where the District Manager does not intend to consider an exception or exemption; and

(5) To which a criterion and an exception or exemption thereto have been applied.

The plan draft amendment package includes the full text of the unsuitability criteria, an explanation of the surface owner consultation process and reprints from the Surface Mining Control and Reclamation Act pertaining to the Federal Lands Review process and surface owner consultation.

The package will be mailed to all known interested individuals; affected surface owners; industry and special interest groups; and local, state, and federal government agencies on or about April 1, 1980. Additional copies will be available from the Montana State Office (222 N. 32nd St., Billings, Montana 59107) and Miles City District Offfice as well as on file in local libraries and adjacent BLM offices.

Public meetings will be held April 24–25–26 to permit interested people the opportunity to discuss the plan draft amendments and enviromental assessment with members of the Miles City BLM District Office staff. Following is the meeting schedule: April 24, Courtroom, Powder River County Courthouse, Broadus, Montana: April 25, Mountain View Room, Commons Building, Sheridan College, Sheridan, Wyoming; April 26, Bicentennial Library, Colstrip, Montana. All meetings will be from 3 to 5 p.m. and 7 to 9 p.m. The plan draft amendment package and detail information provided during the meetings will serve as the basis for public comment. Written comments on the draft will be accepted by the Miles City District Office until May 16, 1980. Oral comments will be accepted during the meetings.

A Federal Public Hearing is also scheduled at 7 p.m. May 20, 1980, in Room 106, Miles Community College, Miles City, Montana. Purpose of the hearing is to accept testimony by anyone who could be adversely affected by these amendments of by decisions indicated in a similar document, "The Powder River Resource Area Management Framework Plan Update Report" of July, 1979. Local publicity on the hearing is forthcoming.

For further information or to submit comments on the draft documents, please contact: District Manager, Bureau of Land Management, West of Miles City, P.O. Box 940, Miles City, Montana 59301, (406) 232–4331.

Robert A. Teegarden,

Acting District Manager.

[FR Doc. 80-10099 Filed 4-2-80; 8:45 am]

BILLING CODE 4310-84-M

Idaho Intensive Wilderness Inventory; Proposed Decision

The Federal Land Policy and Management Act of 1976 (FLPMA) requires the Secretary of the Interior to inventory roadless areas and roadless islands of the public lands to identify those areas possessing wilderness characteristics as defined in the Wilderness Act of 1964.

The **Federal Register** notice of August 10, 1979, announced the Idaho final initial wilderness inventory decision, which indicated the inventory units that required intensive inventory.

The proposed decision below shows which inventory units are recommended as Wilderness Study Areas as a result of the intensive inventory. All units are included except those for which the decision is being deferred due to the protest-appeal process still affecting the prior initial inventory decision.

		Acres proposed as wilderness study areas	Acres not proposed as wilderness study areas
Boise District			
11–17	Outcrop		6,420
14–19	Long Tom Creek		13,226
14–21	Bennett Creek		11,162
16–2	Jump Creek		8,301
16–9	Reynolds Creek Canyon		14,650
16–49c	Squaw Meadow		10,316
17–1a	Lookout Butte		20,077
17–1b	East Fork Bruneau River		10,178
17–6	Dry Lakes		26,208
17–7	Clover Crossing		6,314
17–10	Lower Salmon Falls Creek		22,287
17–11	Jarbidge River	75,340	35,670
17–12	Poison Creek		13,532

		Acres proposed as wilderness study areas	Acres not proposed as wilderness study areas
18-1	Wildhorse		7,472
19-1	Cold Springs Creek		21,380
110-91a	Box Creek[1]	428	
111-5	Poison Gulch		30,742
111-6	Little Jack's Creek	41,143	33,776
111-7a	Big Hill		12,924
111-7b	Duncan Creek		10,005
111-7c	Big Jack's Creek	54,833	10,301
111-12	Sheep Trail		19,702
111-17	Bruneau River	107,020	27,042
111-18	Pole Creek	24,509	7,247
111-19a	Camas Creek		19,347
111-19b	Bull Gulch		33,150
111-20a	Big Springs		5,342
111-20b	Upper Battle Creek		17,787
111-21	Bull Basin		17,625
111-36a	Sheep Creek West	13,070	2,306
111-36b	Sheep Creek East		12,412
	Boise District total	316,343	486,901
	Burley District		
26-1	Hanzel Mountain		20,615
26-3	South Samaria		6,615
27-1	South Deep Creek		9,609
27-2	Deep Creek Peak		6,646
28-1	Petticoat Peak	11,358	1,688
	Burley District total	11,358	45,173
	Idaho Falls District		
31-10	Illinois		11,150
31-11	Deadman Canyon		23,000
31-13	Timbered Dome		10,240
31-14	Appendicitis Hill	24,870	630
31-15	Dry Hollow		17,800
31-17	White Knob Mountains	9,950	
32-2	Sands Canyon		8,010
32-3	Hawley Mountain	15,510	640
32-4	Taylor Mountain		11,134
32-9	Black Canyon	5,400	
32-16	Pass Creek		1,220
33-4	Cedar Butte	35,700	3,120
33-5	Skull		8,650
33-6	Rye Grass		8,000
33-7	Cottontail		9,300
33-12	Split Top		18,080
33-13	Bear Point		20,650
33-14	Mosby Butte		35,720
33-15	Hell's Half Acre	66,200	2,720
33-16	Morgan		9,420
33-22	Cox's Place		12,790
33-23	Bear Trap		13,860
33-24	Firth Quad Islands		86
33-25	Moreland Quad Islands		807
	Idaho Falls District total	157,630	227,027
	Salmon District		
41-3	Geertson Creek		10,720
42-6	Baldy Basin		10,720
43-3	Eighteen Mile	24,922	
44-2	King Mountain		12,602
44-3	Hat creek		9,707
44-4	Ellis Creek		28,040
44-9	Cronks Canyon		7,470
45-5	Mill Creek		1,330
45-12	Burnt Creek	24,980	5,130
47-4	Borah Peak[1]	3,100	780
	Salmon District total	53,002	86,499
	Shoshone District		
54-3	Preacher Creek		8,827
54-4	Rattlesnake Canyon		11,355
54-5	Little City of Rocks	5,875	95
54-6	Black Canyon	10,371	10,589
54-7	Four Mile Bench		7,542
54-8	Gooding City Rocks	21,030	2,440
54-9	Clover Creek		8,455
54-10	Deer Creek	7,487	1,394
54-11	Indian		16,968
54-12	Dempsey Creek		23,644
54-13	Forgotten Hills		9,420
56-2	Lava[2]	23,680	1,913
56-3	Big Wood[3]		
57-2	Shale Butte	15,968	5,930
57-3	Antelope		12,271
57-4	Black Ridge Crater		8,138
57-5	Lone Rock		10,934
57-6	Wildhorse		21,544
57-7	Pagari		33,116
57-8	Sand Butte	20,792	15,953
57-9	Broken Top Butte[4]		
57-10	Raven's Eye	67,110	190
57-11	Little Deer	33,531	9,443
57-12	Laidlaw Butte		9,868
57-13	Potter Butte		16,180
57-14	Bear Den Butte	9,700	4
57-15	Point		7,398
57-16	MacRae Lake		7,876
59-7	Shoshone[5]	6,914	3,014
	Shoshone District total	222,458	264,501
	Coeur d'Alene District		
61-1	Selkirk Crest[1]	720	440
61-6c	Hideway Island		170
61-9	Rochat Creek		6,960
61-10	Crystal Lake	9,027	
61-15a	Grandmother Mountain	10,339	
61-15b	Grandmother Mountain	6,790	
62-1	Snowhole Rapids	5,068	238
62-2	Confluence[1]	4,577	533
62-4	Big Canyon		1,100
62-10	Marshall Mountain[6]	6,524	966
	Coeur d'Alene District total	43,045	10,407
	State total	803,836	1,120,508

[1] Unit dependent on contiguous RARE II area to meet criteria.
[2] Previously called Kinzie East
[3] Now part of Unit 56-2
[4] Now part of Unit 57-10
[5] Previously called Lava
[6] Previously called Gospel Hump.

Public meetings, open houses, and workshops will be held at the following locations throughout the State for discussion of the BLM Wilderness Review, to answer questions, and to obtain input from the public on these proposed decisions.

April 15 7:30 p.m. Idaho Falls Westbank Motel
April 16 11:30 a.m.—8:30 p.m. Arco County Courthouse
April 22 11:30 a.m.—8:30 p.m. Aberdeen High School
April 23 7:00 p.m. Salmon Salmon BLM District Office
April 29 7:30 p.m. Pocatello Holiday Inn
April 30 12:00 noon—8:00 p.m. Twin Falls Little Tree Inn
May 1 7:30 p.m. Moscow Travelodge-Clark Room
May 6 12:00 noon—8:00 p.m. Bruneau American Legion Hall
May 6 12:00 noon—8:00 p.m. Shoshone Shoshone BLM District Office
May 6 7:30 p.m. Lewiston Lewis & Clark State College, Spalding Hall-Conference Room
May 7 12:00 noon—8:00 p.m. Murphy Owyhee County Courthouse
May 8 12:00 noon—8:00 p.m. Boise Boise BLM District Office
May 8 12:00 noon—8:00 p.m. Gooding County Courthouse-Commissioner's Rm.
May 8 7:30 p.m. Coeur d'Alene North Shore Convention Center—Room 3
May 12 12:00 noon—8:00 p.m. Hailey New Blaine County Courthouse
May 14 7:30 p.m. Grangeville Idaho Bank & Trust Bldg.—Meeting room
May 15 12:00 noon—8:00 p.m. Rupert Judicial Bldg. (adj. Minidoka County Courthouse)
May 22 7:30 p.m. St. Maries Federal Building-Conference Room

In summary, 107 inventory units containing over 1,924,000 acres of BLM land were examined in detail to determine the presence or absence of wilderness characteristics. As a result of the intensive inventory field work, it has been determined that 35 inventory units totalling 803,836 acres contain wilderness characteristics, and that 72 inventory units and 1,120,508 acres do not contain characteristics.

Upon publication in the **Federal Register**, this proposed decision is subject to a 90-day public review, extending from April 4, 1980, through July 3, 1980. Comments on the decision should address the presence or absence of those wilderness characteristics as described in the Wilderness act, namely—size, naturalness, outstanding solitude or outstanding primitive recreation opportunities, and supplemental values. All comments must be received by the BLM Idaho State Office or district offices no later than July 3, 1980. Comments received after that date may not be included in the statewide analysis of comments.

The final decision on Wilderness Study Area status is scheduled for late September. With the exception of several inventory units where release of the intensive inventory has been deferred due to protests or appeals, this announcement completes the intensive inventory phase of BLM's wilderness review for Idaho. All areas identified as Wilderness Study Areas in the final decision will be further analyzed through the Bureau's Planning System to determine which areas should receive a suitable or non-suitable recommendation for wilderness designation. Those recommendations will eventually be forwarded to Congress for the final decision on possible designation of areas into the National Wilderness Preservation System.

For futher information on this proposed decision, contact the following BLM offices:

District Manager, Boise District Office, 230 Collins Road, Boise, Idaho 83702.

District Manager, Idaho Falls District Office, 940 Lincoln Road, Idaho Falls, Idaho 83401.

District Manager, Burley District Office, Route 3, Box 1, Burley, Idaho 83318.

District Manager, Salmon District Office, P.O. Box 430, Salmon, Idaho 83467.

District Manager, Coeur d'Alene District Office, 1808 N. Third Street, Coeur d'Alene, Idah 83814.

District Manager, Shoshone District Office, 400 West "F" Street, Shoshone, Idaho 83352.

State Director, Box 042, Federal Building 550 W. Fort Street, Boise, Idaho 83724.

Dated: March 28, 1980.

T. G. Bingham,

Acting State Director.

[FR Doc. 80-10095 Filed 4-2-80; 8:45 am]

BILLING CODE 4310-84-M

[Serial No. I-7297]

Idaho; Termination of Proposed Withdrawal and Reservation of Lands

March 24, 1980.

Notice of an application, serial number I-7297, for withdrawal and reservation of lands was published as Federal Register Document No. 73-25589 on page 33423 of the issue for December 4, 1973. The applicant agency has cancelled its application insofar as it involved the lands described below. Therefore, pursuant to the regulations contained in 43 CFR, Subpart 2091, such lands will be at 10:00 a.m. on April 28, 1980, relieved of the segregative effect of the above mentioned application.

The lands involved in this notice of termination are:

Salmon National Forest

Gunbarrel Research Natural Area, Boise Meridian

T. 24 N., R. 14 E. (Protraction Diagram No. 40)
Sec. 23, S½;
Secs. 24, 25, and 26, All;
Sec. 27, NE¼;
Sec. 35, N½N½.
T. 24 N., R. 15 E. (Protraction Diagram No. 40)
Sec. 24, SW¼;
Sec. 25, NW½.

Metes and bounds description as follows:

Beginning at the confluence of Gunbarrel Creek and the Salmon River in approximate latitude 45° 24' N., longitude 114° 41' W.;

Thence southeasterly up Salmon River to the toe of the ridge being the south watershed divide of Gunbarrel Creek; easterly and northeasterly along said watershed divide to a prominent point at the head of Gunbarrel Creek in SW¼, Section 24, T. 24 N., R. 15 E.; northwesterly and southwesterly along the divide between Horse Creek on the north and Gunbarrel Creek and unnamed drainage on the south immediately west of Gun triangulation station; southwesterly along the west ridge of said unnamed drainage to the Salmon River; southeasterly along the Salmon River approximately 50 chains to the mouth of Gunbarrel Creek, the place of beginning.

The area described aggregates 1,600.00 acres in Lemhi County, Idaho.

Eugene E. Babin,

Acting Chief Branch of L&M Operations.

[FR Doc. 80-10096 Filed 4-2-80; 8:45 am]

BILLING CODE 4310-84-M

[N-27612]

Nevada; Proposed Withdrawal and Opportunity for Public Hearing

March 26, 1980.

The Bureau of Land Management, Department of the Interior, proposes the following described lands be withdrawn, subject to valid existing rights, from appropriation under the public land laws, including the mining laws, but not the mineral leasing laws:

Mount Diablo Meridian, Nevada

T. 17 S., R. 50 E.
Sec. 26, S½;
Sec. 34, NE¼;
Sec. 35, N½N½, SE¼NE¼, SW¼NW¼, W½SW¼, N½NE¼SE¼, NW¼SE¼;
Sec. 36, W½.
T. 18 S., R. 50 E.
Sec. 1, Lots 3 and 4;
Sec. 2, Lots 1 and 2, S½NE¼.

The land described aggregates 1,419.04 acres.

The purpose of the proposed withdrawal is to protect the essential habitat of the Warm Springs Pupfish *(Cyprinodon nevadensis petoralis)*, a Federally listed endangered species. This action is an objective of the approved Warm Springs Pupfish Recovery Plan.

Pursuant to section 204(h) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2754, notice is hereby given that an opportunity for a public hearing is afforded in connection with the pending withdrawal application. All interested persons who desire to be heard on the proposed withdrawal must file a written request for a hearing with the State Director, Bureau of Land Management, at the address shown below within 40 days from the date of publication of this notice. Upon determination by the State Director that a public hearing will be held, a notice will be published in the Federal Register, giving the time and place of such hearings. The hearing will be scheduled and conducted in accordance with BLM Manual Sec. 2351.16 B. All previous comments submitted in connection with the withdrawal application have been included in the record and will be considered in making a final determination on the application.

In lieu of or in addition to attendance at a scheduled public hearing, written comments or objections to the pending withdrawal application may be filed with the undersigned authorized officer of the Bureau of Land Management within the 40 day period allowed.

The above described lands are temporarily segregated from the operation of the public land laws, including the mining laws, to the extent that the withdrawal applied for, if and when effected, would prevent any form of disposal or appropriation under such laws. Segregation will terminate two years from the date of this notice.

All correspondence in connection with this withdrawal should be addressed to the Bureau of Land Management, Department of the Interior, Chief, Division of Technical Services, 300 Booth Street, P.O. Box 12000, Reno, Nevada 89520.

Charles E. Hancock,

Acting Chief Division of Technical Services.

[FR Doc. 80-10092 Filed 4-2-80; 8:45 am]

BILLING CODE 4310-84-M

[Colorado 17593]

Order Providing for Opening of Public Lands and National Forest Lands; Proposed Withdrawal and Opportunity for Public Hearing

AGENCY: Bureau of Land Management, Interior.

ACTION: Order providing for opening of public lands and national forest lands; notice of proposed withdrawal and opportunity for public hearing.

SUMMARY: On January 31, 1973 the Water and Power Resources Service (formerly Bureau of Reclamation) filed application C-17593 for a withdrawal of additional public and National Forest lands for the Fryingpan-Arkansas Reclamation Project. On February 2, 1973 this proposed withdrawal was posted to the public records, thereby segregating the lands. On January 25, 1980, Water and Power Resources Service filed an amended application deleting some of the land orginally applied for. The deleted land is now being restored to operation of the appropriate land laws.

FOR FURTHER INFORMATION CONTACT: Alvah Q. Whitledge, 303-837-2825 at the Bureau of Land Management, Colorado State Office, 1600 Broadway, Denver, Colorado 80202.

1. On February 2, 1973 the following described national forest lands were

segregated from location and entry under the general mining laws. The public lands were segregated from operation of the public land laws, including the general mining laws. All lands remained open to the mineral leasing laws.

T. 10 S., R. 80 W., 6th P.M.
Section 17: SW¼NW¼, SW¼
Section 18: SE¼NE¼
* Section 20: N½N½, E½SW¼, SE¼
* Section 29: S½NE¼
Aggregating 1,480.00 acres more or less.
* National Forest Lands.
T. 9 S., R. 81 W., 6th P.M.
Section 36: N½
T. 11 S., R. 81 W., 6th P.M.
* Section 25: SW¼NW¼, N½SW¼, S½S½, NW¼SE¼
* Section 26: SE¼NE¼, E½SE¼

On January 25, 1980, Water and Power Resources Service amended their application to delete all but the following described lands from this application:

T. 10 S., R. 80 W., 6th P.M., Lake County, Colorado

A strip of land being 60 feet in width, being 30 feet each side of the Mt. Elbert Conduit centerline and being more particularly described as follows:

(A) Beginning at Station 402+33.64 a point which bears S47°11'W a distance of 1,934.1 feet from the Northeast corner of Section 29.

Thence on a tangent S23°41'E a distance of 514.27 feet to P.C. Station 407+47.91;

Thence on a curve to the right with a radius of 1,100.00 feet for 301.76 feet to P.T. Station 410+49.67;

Thence on a tangent S07°57'E a distance of 568.49 feet to P.T. Station 416+18.16 (containing 1.91 acres more or less).

(b) Beginning at Station 360+63.20 which bears N01°19'E a distance of 2,649.5 feet from the South Quarter corner of Section 20,

Thence on a tangent S10°06'E a distance of 1,959.63 feet to P.C. Station 380+22.83;

Thence on a curve to the left with a radius of 2000.00 feet for 474.05 feet to P.T. Station 384+96.88;

Thence on a tangent S23°41'E a distance of 294.89 feet to Station 387+91.77 (containing 3.76 acres more or less).

(c) Beginning at Station 283+87.50 which point bears S28°43'W a distance of 1,491.1 feet from the Northeast corner of Section 18,

Thence on a tangent S34°30'E a distance of 483.56 feet to P.C. Station 288+71.06;

Thence on a curve to the right with a radius of 3000.00 feet for 335.25 feet to P.T. Equation Station 292+06.31 BK=293+75.51 AH;

Thence on a tangent S28°06'E a distance of 599.27 feet to P.T. Station 299+74.78 a point on the East line of Section 18;

Thence on a tangent S28°06'E a distance of 3,166.97 feet to P.T. Station 331+41.75 a point on the South line of Section 17;

Thence on a tangent S28°96'E a distance of 1,508.17 feet to P.T. Station 346+49.92 (containing 8.39 acres more or less).

All bearings stated above are grid bearings from Colorado State Plane Coordinates. The area described aggregates approximately 14.06 acres.

3. Therefore, at 10:00 a.m. on May 5, 1980 the deleted National Forest lands and public lands will be relieved of the segregative effect of this withdrawal application subject to any valid existing rights.

Any valid applications received prior to 10:00 a.m. on May 5, 1980 shall be considered simultaneously filed at that time. Applications received thereafter shall be considered in the order of filing.

4. This publication is to be considered notice of the proposed withdrawal of the lands described in paragraph 2 above, and opportunity for public hearing regarding the proposed withdrawal pursuant to Section 204(h), Federal Land Policy and Management Act of 1976 (90 Stat. 2754). All persons who desire to be heard on the proposed withdrawal must file a written request for hearing with the State Director, Bureau of Land Management, Colorado State Office, 1600 Broadway, Denver, CO 80202.

This must be done or before May 5, 1980.

If a public hearing is to be held, notice of such hearing will be published in the Federal Register giving the time and place. The hearing will be scheduled in accordance with BLM Manual Section 2351.16B.

In lieu of or in addition to attendance at a scheduled public hearing, written comments or objections to the proposed withdrawal application may be filed with the Bureau of Land Management on or before May 5, 1980.

5. The lands described in paragraph 2 remain temporarily segregated from the operation of the public land laws, including the mining laws, to the extent that the withdrawal applied for, if and when effected, will prevent any form of disposal or appropriation under such laws. Current administrative jurisdiction over the segregated lands will not be affected by the temporary segregation. In accordance with Section 204(g) of the Federal Land Policy and Management Act of 1976, the segregative effect of the pending withdrawal application will terminate on October 21, 1991, unless sooner terminated by action of the Secretary of the Interior.

Robert D. Dinsmore,

Chief, Branch of Adjudication.

[FR Doc. 80-10098 Filed 4-2-80; 8:45 am]

BILLING CODE 4310-84-M

Status of California's Wilderness Inventory Program

Part I—Wilderness Inventory of Public Lands Outside the California Desert Conservation Area

A. Status of previously announced decisions: "Final Intensive Inventory, Public Lands administered by BLM California outside the California Desert Conservation area—Wilderness," December 1979.

The final intensive wilderness inventory decisions, for public lands administered by the California State Office, Bureau of Land Management, were announced in the above report and by a Federal Register Notice on January 7, 1980. A total of 3,203,000 acres in 266 inventory units were intensively inventoried. Ninety-three inventory units or parts thereof, totaling 1,134,000 acres were identified as Wilderness Study Area's (WSA's). Two hundred thirty two inventory units or parts thereof, totaling 2,069,000 acres were found not to qualify as WSA's.

1. *Final Decisions.*

The January 7, 1980, Federal Register Notice established a 30 day protest period which closed on February 5, 1980. With the exception of those inventory units on which a protest was filed, my previously announced decisions are now final. The inventory decisions are final for the following units:

Bakersfield District CA-010—002, 007, 011, 012, 016, 017, 020, 025, 026, 030, 032, 035, 036, 037, 042, 046, 052, 070, 071, 072, 074, 077, 078, 079, 085, 090, 091A, 092, 094, 095, 096, 097, 099, 100, 102, 103, 105A, 105B, 108, and 109.

Susanville District CA-020—002, 102A, 102B, 103, 103A, 103B, 104, 104A, 105, 202, 205, 206, 207, 207A, 208, 208A, 212A, 303A, 303B, 304, 305, 306, 308A, 309A, 310A, 310B, 311, 312A, 313B, 602, 603, 605A, 610, 612, 614A, 615, 616, 617, 617A, 619, 619A, 619D, 619E, 619F, 620, 704, 704A, 705A, 708, 802, 803, 804, 805, 805A, 806, 808, 809, 810, 811, 812, 813, 814, 815, 818, 819, 821A, 905A, 905B, 905C, 906, 909, 909A, 911, 912, 917, 918, 1004A, 1006A, 1006B, 1009A, 1012, and 1015.

Redding District CA-030—101, 201, 203, 204, and 503.

Folsom District CA-040—102, 201, 301A, 301B, 303, 305A, 305B, 305C, 308, and 309.

Ukiah District CA-050—111, 112, 113, 121, 132, 212, 221, 222, 313, 314, 315, 317, and 331.

Riverside District CA-060—002, 020A, 020B, 020C, 020F, 020G, 021A, 021B, 022, 023, 024A, 024B, 024C, 024D, 024E, 025A, 025B, 027A, 027B, 027C, 027D, 028, and 029.

The identified WSA's in the above inventory units will continue to be subject to the interim management requirements of Section 603–C of the Federal Land Policy and Management Act of 1976 (FLPMA). The non-WSA units or parts of units are no longer under these interim management requirements.

2. *Protested Decisions.*

For any unit on which a protest was filed my announed decision is stayed until the protest and administrative appeal process is completed. Protests were received on the following inventory units:

Bakersfield District CA–010—022, 023, 027, 028, 029, 040, 045, 055, 056, 057, 058, 059, 060, 062, 063, 064, 065, 068, 075, 080, 081, 082, 083, 084, 088, 091B, 104, 106, and 110.

Susanville District CA–020—003, 004, 005, 006, 102, 209, 210, 211, 212, 303, 307, 308, 309, 310, 313, 313A, 402, 604, 605, 605B, 606, 608, 609, 611, 613, 614, 619B, 619C, 703, 705, 706, 904, 905, 910, 911A, 913A, 913B, 915, 916, 1006, 1007, 1008, 1009, and 1013.

Redding District CA–030—402, 501, and 504.

Folsom District CA–040—202, 203, and 207.

Ukiah District CA–050—131, 134, 135, 211, 213, 214, 312, 316, 318, 319, and 332.

Riverside District CA–060—020D, 020E, and 026.

In summary protests have been received on a total of 93 intensive inventory units containing 1,295,533 acres of public land. Of this 279,664 acres were identified as WSA's and 1,015,869 acres as not meeting the criteria for designation as a WSA. Protested inventory units remain under the interim management requirements of Section 603–C of FLPMA while the unit is under protest or appeal. I expect to announce my decisions on these protests in the **Federal Register** about June or July.

3. *Appealed Decisions* (Final Initial Inventory, July 1979).

As announced in our December 1979 report and our **Federal Register** Notice of January 7, 1980, the following 12 initial wilderness inventory units have been formally appealed to the Interior Board of Land Appeals (IBLA):

CA–010–031, 033, 047, 069, 087, 101, CA–020–701, 901, 1001, CA–030–300, 400, and 500.

As of the time of preparation of this notice, all or portions of these units were still under appeal and they remain under the interim management restrictions of Section 603–C of FLPMA.

B. Proposed Decisions.

As announced in the above report (Final Intensive Inventory, December, 1979) my intensive wilderness inventory decisions were deferred on several interstate units. These interstate inventory units are roadless areas of public land which across BLM State Office administrative boundries. The interstate unit may or may not also cross State boundries.

The California administered portion of each interstate unit was published in draft form on July 16, 1979 (**Federal Register**, Vol. 44, No. 137, Monday July 16, 1979 pp. 41354 and 41355) and was subjected to a 90 day public comment period. Publication of these joint proposed decisions starts a new 90 day public comment period on the entire roadless inventory unit.

The public is invited to comment on the draft narrative findings and maps and to submit additional information to assist in the assessment of wilderness characteristics on these public lands. All comments will be treated equally whether they are sent by mail or provided in writing or orally at a public meeting. Public meetings are being announced by the Oregon and Nevada State Directors.

A copy of the draft summary report and maps for both the Oregon-California and the Nevada-California interstate units is being sent to all persons on California's mailing list. One inventory unit was originally thought to be an interstate unit but additional road definition showed it to be administered entirely by the California State Office. It is included in the Nevada-California report to allow for additional public review. Additional copies of these reports are available from the State Director (Wilderness), Bureau of Land Management, 2800 Cottage Way, Rm. E–2841, Sacramento, California 95825. (Copies of the draft interstate inventory reports are also available from the appropriate adjacent state office. For Oregon-California units this is the State Director, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 92708. For Nevada-California units this is the State Director, Bureau of Land Management, 300 Booth Street, P.O. Box 12000, Reno, Nevada 89520.)

Under authority delegated to me be the Director, Bureau of Land Management, I hereby determine that the public lands in these interstate inventory units which are administered by the Bureau of Land Management, California have been inventoried according to the provisions of the Bureau's Wilderness Inventory Handbook of September 27, 1978 and that a joint proposed decision has been reached for the entire interstate unit by the affected State Directors.

These interstate units include 232,980 acres administered by the California State Office. Of this 118,470 acres in all or part of 4 inventory units are proposed as WSA's and 114, 510 acres in all or part of 12 units are proposed as lacking wilderness characteristics. (There is a total of 320,735 acres of public land in 15 inventory units; 87,755 acres are administered by an adjoining BLM State Office.) These inventory units and proposed decisions are as follows:

1. Oregon-California Interstate Units.

The Oregon State Director announced his decisions on the Oregon-California interstate units in **Federal Register** Notice scheduled to have been published on March 27, 1980. The 90 day public review period for these units closes June 25, 1980.

(a) Units proposed as WSA's: None

(b) Units proposed as lacking wilderness characteristics.

	Oregon State Office	California State Office		Total Public Land
	Oregon	Nevada	California	
1–126/CA–020–1010, Coleman Valley/Macy Flat	(23,640)	13,060		36,700
1–157/CA–020–1005, Coleman Valley West/ Coleman Ranch	(10,000)	13,005		23,005
1–164/CA–020–1004, Snuff/Twelve Mile Creek	(1,440)	11,670	3,020	16,130
Total	(35,080)	37,735	3,020	75,835

2. Nevada—California Interstate Units.

The Nevada State Director is scheduled to announce his decisions on the portions of the Nevada—California interstate units administered by the Nevada State Office on April 1, 1980. The 90 day public review period for these units closes June 30, 1980.

(a) Units proposed as WSA's.

	Nevada State Office		California State Office		Total Public Land
	NV	CA	NV	CA	
NV-020-006A/ CA-020-914, East Fork High Rock Canyon	(7,470)		46,450		53,920
NV-020-008/ CA-020-913, Little High Rock Canyon [1]	(8,703)		43,440		52,143
NV-020-012/ CA-020-618, 612 Poodle Mountain [1]	(102,449)		25,380		127,829
NV-030-531/ CA-010-105, Slinkard		(2,240)		3,200	5,440
Total	(118,622)	(2,240)	115,270	3,200	239,332

[1] Part of unit not a WSA.

(b) Units Proposed as lacking wilderness characteristics.

	Nevada State Office	California State Office		Total Public Lands
	NV	NV	CA	
NV-020-001/CA-020-919, Ten Mile Spring	(9,800)	1,590		11,470
NV-020-004/CA-020-813A8B, Hog Ranch Mountain	(4,620)	5,360		9,980
NV-020-006/CA-020-914A, Warm Springs Canyon	(56,419)	8,950		65,369
NV-020-008/CA-020-913, Little High Rock Canyon [1]	(430)	1,000		1,430
NV-020-009/CA-020-823, Leadville	(25,703)	1,320		27,023
NV-020-010/CA-020-816, 820, 821, Crutcher	(17,100)	35,645		52,745
NV-020-012/CA-020-618, 621, Poodle Mountain	(8,651)	680		9,331
NV-020-021/CA-020-822A & B, 823, No Name	(4,110)	1,120		5,230
NV-030-603/CA-020-403, Fort Sage Mountain	(10,200)		12,790	22,990
Total	(137,113)	55,665	12,790	205,568

[1] Most of unit is a WSA.

3. California Inventory Unit.

One unit, CA-020-822, was reported in our December 1979 Final Intensive Inventory Report as being deferred because it was an interstate unit. Further road definition has separated off units CA-020-822A and CA-020-822B leaving unit CA-020-822 as a non-interstate unit. This unit is being republished to allow for additional public comment. The comment period for this unit closes on June 30, 1980.

Unit Proposed as Lacking Wilderness Characteristics

	California State Office—Nevada	Total Public Land
CA-020-822 Negro Creek	5,300	5,300

4. Summary of proposed intensive inventory decisions (items B-1, 2, and 3 above) by State and by District.

Public Lands Administered by the California State Office

	Units [1]	Acres
State of Nevada:		
Susanville district:		
Proposed as WSA	3	115,270
Proposed as non-WSA	12	98,700
Subtotal		213,970
State of California:		
Bakersfield district:		
Proposed as WSA	1	3,200
Susanville district:		
Proposed as non-WSA	2	15,810
Subtotal		19,010
Grand total		232,980

[1] An inventory unit may fall into more than one category.

The proposed intensive inventory decisions for the contiguous public lands in these interstate units which is administered by another state office are being announced by the State Director of that office as stated in items B-1 and B-2 above. A final decision is expected to be announced in September 1980.

Part II—California Desert Conservation Area, Final Wilderness Inventory, March 31, 1979, and Amendments and Clarifications, December 27, 1979

The status of the California Desert Conservation Area (CDCA) wilderness inventory was announced in a Federal Register Notice on January 7, 1980. That notice divided the wilderness inventory units for the CDCA into three categories based on their status at that time. This notice uses the same categories and gives the current status of the inventory units in each group.

1. Final Decisions: The above Federal Register Notice listed the units on which the wilderness inventory decision was final. Area 367 was omitted from this list and area 376A was erroneously listed as 367A (following area 375). The wilderness inventory is final for both area 367 and 376A. (The complete list is on page 1456 of the January 7, 1980 Federal Register Notice).

2. Amended Decisions: The above notice listed five units for which an amended inventory decision had been made. The protest period closed on February 5, 1980, and the amended decision is now final for areas 145, 159, 184, 184A, and 184B.

3. Appealed Decisions: The above notice listed 30 inventory units which had been appealed to the Interior Board of Land Appeals. These 30 units are: Areas 117, 131, 136, 137A, 143, 150, 156, 158, 172, 207, 217, 221, 222, 227, 242, 251, 251A, 263, 264, 265, 266, 271, 299, 305, 321, 325, 334, 343, 348, and 376. As of the time of preparation of this notice, these units were still under appeal and they remain under the interim management restrictions of Section 603-C of FLPMA.

Part III—Summary of California's BLM Wilderness Inventory to date.

The following table summarizes the present status of the BLM, California State Office wilderness inventory program.

		Public land acres
State of California		16,434,000
California Desert Conservation Area (CDCA) [1]		12,120,000
Areas lacking wilderness characteristics		(6,617,000)
Areas with wilderness characteristics (WSA's)		(5,503,000)
Outside the CDCA		4,314,000
Areas lacking wilderness characteristics		(3,476,000)
Dropped in the Initial Inventory [2]	2,160,000	
Dropped in the Intensive Inventory [3]	1,301,000	
Proposed to be dropped	16,000	
Areas with wilderness characteristics (WSA's)		(838,000)
Identified WSA's in the Intensive Inventory [3]	835,000	
Proposed WSA's	3,000	
State of Nevada (administered by CA State Office)		1,433,000
Areas lacking wilderness characteristics		(1,018,000)
Dropped in the Initial Inventory [2]	151,000	
Dropped in the Intensive Inventory [3]	768,000	
Proposed to be dropped	99,000	
Areas with wilderness characteristics (WSA's)		(415,000)
Identified WSA's in the Intensive Inventory [3]	300,000	
Proposed WSA's	115,000	

[1] CDCA—Thirty inventory units totaling 3,197,000 acres have been appealed to the Interior Board of Land Appeals (IBLA).

[2] Initial Inventory—Twelve inventory units totaling 443,175 acres have been appealed to IBLA.

[3] Intensive Inventory—Ninty-three inventory units totaling 1,295,533 acres have been protested (see item I-A-2 above).

James B. Ruch,

State Director, California.

[FR Doc. 80-10101 Filed 4-2-80; 8:45 am]

BILLING CODE 4310-84-M

Western Slope Carbon, Inc., Notice of Invitation

Western Slope Carbon, Inc. has filed Application Number C-30007 with the Denver Office of the Bureau of Land Management for a license to conduct coal exploration work on the following tract in Gunnison County, Colorado:

T 13 S., R 90 W., 6th P.M.
Sec. 1: N. ½;

Sec. 2: N. ½;
Sec. 3: N. ½;
Sec. 4: N. ½; SW ¼.

The company is planning to drill three exploratory holes, one in each section of the tract described. A copy of the exploration plan is available for public inspection at the Denver BLM office.

The Public Is Hereby Invited To Participate in Western Slope Carbon's exploration program under the license applied for. Any interested party is invited to notify the Leader of the Montrose Team, Branch of Adjudication of the Bureau of Land Management, Room 700, Colorado State Bank Bldg., Denver, Colorado 80202, and Western Slope Carbon at 315 East 200 South, Salt Lake City, Utah 84111, attention of Al Amundson, Chief Engineer, Tel. 801/534–3329. Such notifications must be received, in writing, by both the BLM Office and Western Slope Carbon within 30 days after the publication of this Notice in the **Federal Register** (May 5, 1980) which is expected to occur approximately 10 days after its first publication in this newspaper. Any interested party must pay its prorata share of all exploration costs related to this license.

This Notice is published by Western Slope Carbon pursuant to the requirements of the applicable Coal Management Regulations, Subpart 3410 of Title 43 of the Code of Federal Regulations.

Merrill G. Anderson,

Team Leader, Montrose Branch of Adjudication.

[FR Doc. 80–10100 Filed 4–2–80; 8:45 am]

BILLING CODE 4310–84–M

Fish and Wildlife Service

Availability of Environmental Assessments for Wildlife Restoration Projects

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability for inspection and public comment.

SUMMARY: This notice provides a listing of Environmental Assessments available for public review to supplement those previously listed in the **Federal Register** July 20, August 3, September 6, October 5, November 16, and December 27, 1979, and March 7, 1980. The Assessments and Findings of No Significant Impact were prepared on certain projects conducted by State fish and wildlife agencies under the Federal Aid in Wildlife Restoration program. The public is invited to comment, and information is provided on the locations at which the documents may be reviewed.

DATE: Comments must be received at the locations indicated by May 5, 1980.

ADDRESSES: The assessments are available for inspection at the following locations:

FWS Federal Aid Office, 1000 N. Glebe Road, Arlington, Virginia 22201.
Region 1, FWS, Lloyd 500 Building, Suite 1692, 500 N.E. Multnomah Street, Portland, Oregon 97232.
Region 2, FWS, 500 Gold Avenue, S.W., P.O. Box 1306, Albuquerque, New Mexico 87103.
Region 3, FWS, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111.
Region 4, FWS, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, Georgia 30303.
Region 5, FWS, 1 Gateway Center, Suite 700, Newton Corners, Massachusetts 02158.
Region 6, FWS, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225.
Alaska Area Office, FWS, 1011 E. Tudor Road, Anchorage, Alaska 99507.
Central headquarters office of the State fish and wildlife agency.

Interested persons are invited to submit comments to the appropriate Regional Director at the above regional addresses on or before May 5, 1980. Copies of the assessment may be obtained at the Regional Offices upon payment of reasonable reproduction costs pursuant to 43 CFR, Part 2, Appendix A. Copies of any Finding of No Significant Impact will be provided free of cost.

FOR FURTHER INFORMATION CONTACT: Mr. Charles K. Phenicie, Chief, Division of Federal Aid, U.S. Fish and Wildlife Service, Washington, D.C. 20240, telephone 703–235–1526.

SUPPLEMENTARY INFORMATION: On June 26, 1979, the U.S. District Court for the District of Columbia issued an order dismissing Civil Action No. 78–430 involving the Federal Aid in Wildlife Restoration program. The dismissal effected an agreement by plaintiffs and defendants which included a provision that the Fish and Wildlife Service would publish in the **Federal Register** a notice of availability of certain Environmental Assessments for inspection and public comment. Pursuant to the stipulated agreement, this notice lists Environmental Assessments prepared to date and will be supplemented as other assessments are prepared.

The principal author of this notice is Dr. Robert J. Sousa, U.S. Fish and Wildlife Service, Division of Federal Aid, Washington, D.C. 20240, telephone 703–235–1526.

Notice is hereby given of availability for inspection and comment of environmental assessments for the following Federal Aid project funded in part by the U.S. Fish and Wildlife Service (FWS) under the Pittman-Robertson Federal Aid in Wildlife Restoration Act, 16 U.S.C. 669 et seq: (Activities listed are not exclusive.)

Region 6

Colorado W–111–D: This regional development project covers management and maintenance activities on 17 Wildlife Management Areas in the northwest quadrant of Colorado. Work is directed toward maintenance of facilities and habitat conditions for game and nongame wildlife species and provision of public use opportunities for wildlife-oriented recreation. Among project activities are herbaceous seeding, rangeland rehabilitation, vegetation control, and routine maintenance of all existing facilities.

Dated: March 31, 1980.

Robert S. Cook,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 80–10079 Filed 4–2–80; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Committee for the Preservation of the White House; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Committee for the Preservation of the White House will be held at 2:00 p.m. on Friday, May 2, 1980, in the Indian Treaty Room of the Old Executive Office Building (on Pennsylvania Avenue, NW., just west of the White House), Washington, D.C.

The Committee was established for the purpose of advising the Director of the National Park Service so that he may make recommendations to the President concerning the preservation and the interpretation of the museum character of the principal corridor on the ground floor and the principal public rooms on the first floor of the White House. The Committee shall make recommendations as to the articles of furniture, fixtures, and decorative objects which shall be used or displayed in the aforesaid areas of the White House and to the decor and arrangements therein best suited to enhance the historic and artistic values of the White House and of such articles, fixtures, and objects.

Purpose of the meeting: The Committee will discuss and recommend priorities for acquisition to the White House Collection, receive subcommittee reports and reports on previous acquisitions and loans.

The meeting will be open to the public. Public attendance depending on available space will be limited to those who have notified the Executive Secretary of the Committee in writing at least 5 days prior to the meeting of their intention to attend the May 2 meeting.

Any member of the public may file a written statement with the Committee before, during or after the meeting. To the extent that time permits the Committee Chairman may allow public participation.

All communication regarding the Committee should be addressed to Mr. Elmer S. Atkins, Executive Secretary, Committee for the Preservation of the White House, Room 344, 1100 Ohio Drive, SW., Washington, D.C. 20242.

Dated: March 28, 1980.

Manus J. Fish, Jr.,

Regional Director, National Capital Region.

[FR Doc. 80-10147 Filed 4-2-80; 8:45 am]

BILLING CODE 4310-10-M

Water and Power Resources Service

Interim Water Service Contracts; Intent To Enter Into Interim Water Service Contracts

The Water and Power Resources Service (Service), Department of the Interior, may enter into interim water service contracts for irrigation and municipal and industrial (M&I) water when such water is available and surplus to project needs. Contracts of this type can be entered into upon short notice to meet emergency needs or temporary demands. However, without departmental approval, such contracts may not exceed 1 years in duration and are limited to not more than 10,000 acre-feet per irrigation contract or 500 acre-feet per M&I contract. All interim contracts will specify quantities, rates and other terms and conditions in compliance with Reclamation law and Service policy.

The Regional Director, Amarillo, Texas, has authority to execute interim water service contracts of not to exceed 1 year in duration and not more than 2,000 acre-feet per irrigation contract or 500 acre-feet per M&I contract in Texas, Oklahoma, southern Kansas, and all but the extreme western portions of New Mexico. At this time, it appears that water, surplus to project needs, will be available for sale from the San Juan-Chama Project, New Mexico. The New Mexico Interstate Stream Commission has expressed interest in negotiating an interim water service contract for a period of 1 year and for up to 2,000 acre-feet of water from the San Juan-Chamas Project. The water will be used by the Commission to provide emergency agricultural water supplies to prevent crop losses in New Mexico.

Approximately 5,000 acre-feet of San Juan-Chama Project water is estimated to be surplus to project needs in 1980. Pursuant to Service policy, interim water service for irrigation will be provided at a cost equal to a proportionate share of annual operation and maintenance costs and an appropriate share of capital costs. In past years the cost of interim irrigation water service from the San Juan-Chama Project has ranged from $4.70 to $5.20 per acre-foot.

Other Service projects in the region with regulated reservoir storage may have minor quantities of surplus water available this year to meet temporary or emergency demands. All releases will be subject to State laws for beneficial use and prior appropriation rights.

Parties interested in receiving information about the Service's interim water marketing program should contact Mr. Ira M. Stevens, Repayment and Economics Branch, Water and Power Resources Service, 714 South Tyler, Suite 201, Amarillo, Texas 79101, telephone (806) 378-5430. Unless significant public interest in the proposed interim water marketing program is demonstrated in response to this notice, announcement of the availability of negotiated draft contracts will be limited to those parties who have expressed an interest therein. Written comments on any draft contract must be submitted not later than 30 days after the completed draft is declared available.

Parties interested in obtaining a temporary supply of water from a Service project should apply in writing to the Regional Director, Water and Power Resources Service, Amarillo, Texas, at the above address.

Dated: March 25, 1980.

Clifford I. Barrett,

Assistant Commissioner of Water and Power Resources.

[FR Doc. 80-9698 Filed 4-2-80; 8:45 am]

BILLING CODE 4310-09-M

INTERSTATE COMMERCE COMMISSION

Motor Carrier Finance Applications; Decision-Notice

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 and 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by Special Rule 240 of the Commission's Rules of Practice (49 CFR § 1100.240). These rules provide, among other things, that opposition to the granting of an application must be filed with the Commission within 30 days after the date of notice of filing of the application is published in the **Federal Register.** Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. Opposition under these rules should comply with Rule 240(c) of the Rules of Practice which requires that it set forth specifically the grounds upon which it is made, and specify with particularity the facts, matter and things relied upon, but shall not include issues or allegations phrased generally. Opposition not in reasonable compliance with the requirements of the rules may be rejected. The original and one copy of any protest shall be filed with the Commission, and a copy shall also be served upon applicant's representative or applicant if no representative is named. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 240(c)(4) of the special rules and shall include the certification required.

Section 240(c) further provides, in part, that an applicant who does not intend timely to prosecute its application shall promptly request its dismissal.

Further processing steps will be by Commission notice or order which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication except for good cause shown.*

Any authority granted may reflect administratively acceptable restrictive amendments to the transaction proposed. Some of the applications may have been modified to conform with Commission policy.

We find with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper division of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the

human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In those proceedings containing a statement or note that dual operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a protestant, that the proposed dual operations are consistent with the public interest and the national transportation policy subject to the right of the Commission, which is expressly reserved, to impose such conditions as it finds necessary to insure that applicant's operations shall conform to the provisions of 49 U.S.C. 10930.

In the absence of legally sufficient protests as to the finance application *or* any application directly related thereto filed within 30 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

MC–F–14260F, filed December 11, 1979. COORS TRANSPORTATION COMPANY (Coors) (5101 York Street, Denver, CO)—purchase (portion)—Lucius, Inc. (Lucius) (9250 North Wadsworth Blvd., Broomfield, CO 80020). Representative: Leslie R. Kehl, 1600 Lincoln Center Bldg., 1660 Lincoln Street, Denver, CO 80264. Coors is seeking authority to purchase a portion of the interstate operating rights of Lucius. Adolph Coors Company, a non-carrier and the sole stockholder of Coors, seeks to acquire control of said rights through the transaction. Coors is purchasing that portion of the interstate operating rights contained in certificates issued to Lucius in MC–138069 (Sub-No. 2 and 7), which authorizes the transportation of *alcoholic beverages and non-alcoholic beverage mixes,* (except commodities in bulk), over irregular routes, (1) from points in CA, to Denver, CO, and (2) from points in CA, to Pueblo, CO, restricted in (1) and (2) above to the transportation of traffic destined to the named destinations. Lucius is retaining that portion of MC–138069 (Sub-Nos. 2 and 7) which authorizes the transportation of *alcoholic beverages and non-alcoholic beverage mixes* (except commodities in bulk), over irregular routes, (1) from points in MI and LA and St. Louis, MO, to Denver, CO; (2) from points in IL, IN, KY, TX (except Houston), to Denver, CO; (3) from Houston, TX, to Denver, CO, (4) from Cincinnati, OH, to Denver, CO, and (5) from St. Louis, MO, Cincinnati, OH, and points in IL, IN, KY, LA, MI, and TX, to Pueblo, CO, restricted in (1) through (5) above to the transportation of traffic destined to the named destinations. Coors is authorized to operate as a motor common carrier pursuant to certificates issued in MC–145054 and sub-numbers thereunder and as a motor contract carrier pursuant to permits issued in MC–136407 and sub-numbers thereunder throughout the States of AZ, CA, CO, KS, ID, LA, OK, OR, MT, NM, NE, NV, TX, UT, WA, and WY. (Hearing site: Denver, CO.)

Notes.—(1) Application has been filed for temporary authority under 49 U.S.C. 11349. (2) Dual operations may be involved.

MC–F–14321F, filed February 21, 1980. SMITHWAY COACHES, LTD. (Smithway) (P.O. Box 404, Ft. Dodge, IA 50501)—purchase—Fort Dodge Transportation Company (Fort Dodge) (One North 20th Street, P.O. Box 654, Fort Dodge, IA 50501). Representative: Arlyn L. Westergren, Suite 106, 7101 Mercy Road, Omaha, NE 68106. Smithway seeks authority to purchase the interstate operating rights of Fort Dodge. Harold C. Smith, Russell J. Hilken, and William G. Smith, equal stockholders of Smithway also seek authority to acquire control of said rights through the transaction. Smithway is purchasing the interstate operating rights contained in Fort Dodge's Certificates in MC–117324 and subnumbers thereunder, which authorize operations, in interstate or foreign commerce, as a motor common carrier, as follows: (1) *Passengers and their baggage,* in round-trip charter operations, over irregular routes, beginning and ending at Fort Dodge, IA, and points within 50 miles thereof, and extending to points in MN, WI, IL, NE, MO, AR, CO, CA, NY, LA, SD, and DC; (2) *Passengers and their baggage,* and *express, mail, and newspapers* in the same vehicle with passengers, over regular routes, (a) between Algona and Fort Dodge, IA, serving all intermediate points: from Algona over U.S. Hwy 169 to junction IA Hwy 222, then over IA Hwy 222 to Livermore, IA, than return over IA Hwy 222 to junction U.S. Hwy 169, then over U.S. Hwy 169 to junction IA Hwy 413, then over IA Hwy 413 to Fort Dodge, and return over the same route, and (b) between Fort Dodge and Spirit Lake, IA, serving all intermediate points; from Fort Dodge over IA Hwy 413 to junction U.S. Hwy 169, then over U.S. Hwy 169 to Humboldt, IA, then over IA Hwy 3 to Pocahontas, IA, then over IA Hwy 17 to junction IA Hwy 10, then over IA Hwy 10 to Havelock, IA, then return over IA Hwy 10 to junction IA Hwy 17, then over IA Hwy 17 to junction unnumbered hwy, then over unnumbered hwy to Mallard, IA, then return over unnumbered hwy to junction IA Hwy 17, then over IA Hwy 17 to junction unnumbered hwy, then over unnumbered hwy to Graettinger, IA, then return over unnumbered hwy to junction IA Hwy 17, then over IA Hwy 17 to Estherville, IA, then over IA Hwy 9 to Spirit Lake, and return over the same route; (3) *Passengers and their baggage,* and *express and newspapers* in the same vehicle with passengers, over regular routes, between Spirit Lake, IA, and Worthington, MN, serving all intermediate points: from Spirit Lake over IA Hwy 9 to junction IA Hwy 238, then over IA Hwy 238 to Harris, IA, then over unnumbered county hwys to the IA–MN State line, then over MN Hwy 264 to Round Lake, MN, then over unnumbered county road to Worthington, MN, and return over the same route; (4) *Passengers and their baggage,* in round-trip charter and special operations, over irregular routes, beginning and ending at points in Carroll, Greene, Sac, Calhoun, Webster, Hamilton, Hardin, Buena Vista, Pocahontas, Humboldt, Wright, Franklin, Palo Alto, Hancock, Kossuth, Emmet, and Dickinson Counties, IA, and Nobles County, MN, and points in that part of Boone County, IA, on and west of IA Hwy 17, and extending to points in the United States (including AK, but excluding HI); and (5) *Passengers and their baggage,* and *express* moving in the same vehicle with passengers, over regular routes, between Humboldt and Hampton, IA, serving all intermediate points on the specified routes: from Humboldt over IA Hwy 3 to junction IA Hwy 302, then over IA Hwy 302 to Thor, IA, then return over IA Hwy 302 to junction IA Hwy 3, then over IA Hwy 3 to junction IA Hwy 17, then over IA Hwy 17 to Eagle Grove, IA, then return over IA Hwy 17 to junction IA Hwy 3, then over IA Hwy 3 to Hampton, and return over the same route. Smithway presently holds no operating authority from the Commission. However, Smithway is affiliated with Smithway Motor Xpress, Inc., a motor common carrier pursuant to certificates in MC–

138627 and sub-numbers thereunder, which authorize the transportation of specified commodities in the States of AR, IL, IN, IA, KS, KY, MI, MN, MO, NE, ND, OH, OK, PA, SD, TN, and WI. (Hearing site: Des Moines, IA, or Omaha, NE.)

Note.—Application for temporary authority has been filed.

MC–F–14299F, filed January 22, 1980. OLIVER MOTOR SERVICE, INC. (Oliver) (P.O. Box 223, East Hwy 54, Mexico, MO 65265)—purchase—GUSTAVE A. SCHMIDT, d.b.a. SCHMIDT TRUCK LINE (Schmidt)(910 Sunset Drive, Macon, MO 63552). Representative: Leonard R. Kofkin, 39 South LaSalle Street, Chicago, IL 60603. Oliver seeks authority to purchase the interstate operating rights and property of Schmidt. John F. Oliver, the sole stockholder of Oliver, seeks authority to acquire control of said rights and property through the transaction. Oliver is purchasing the interstate operating rights of Schmidt that are contained in Certificate No. MC–81724, which authorizes the transportation, as a motor common carrier, (1) over *regular routes,* transporting: (a) *steel, steel castings,* and *fittings,* between Centralia, MO and Chicago, IL and Indianapolis, IN; (i) from Centralia over MO Hwy 22 to Mexico, MO, then over U.S. Hwy 54 to junction U.S. Hwy 36, then over U.S. Hwy 36 to Springfield, IL, and then over U.S. Hwy 66 to Chicago; (ii) from Centralia over the above-specified route to junction U.S. Hwy 36, then over U.S. Hwy 36 to Indianapolis; (iii) from Centralia over MO Hwy 22 to Mexico, MO, then over U.S. Hwy 54 to junction MO Hwy 19, then over MO Hwy 19 to junction U.S. Hwy 40, and then over U.S. Hwy 40 to Indianapolis; and return over these routes to Centralia. Service is authorized to and from the intermediate point of East St. Louis, IL and the off-route points of Alton, Monsanto, and Madison, IL; (b) *acid, in carboys,* between Monsanto, IL and Centralia, MO, from Monsanto over IL Hwy 3 to East St. Louis, IL, then over U.S. Hwy 40 to junction MO Hwy 19, then over MO Hwy 19 to junction U.S. Hwy 54, then over U.S. Hwy 54 to Mexico, MO and then over MO Hwy 22 to Centralia; and (c) *empty carboys,* from Centralia over the above-specified route to Monsanto. Service is not authorized to or from the intermediate points; and (2) over *irregular routes,* transporting: (a) *livestock,* between Centralia, MO and points within 30 miles of Centralia on the one hand, and, on the other National Stock Yards, IL; and (b) *household goods,* as defined by the Commission, between Centralia, MO and points within 15 miles of Centralia on the one hand, and, on the other, points in IL. Oliver is authorized to operate as a motor common carrier pursuant to certificates issued in MC–124511 and sub-numbers thereunder. (Hearing site: St. Louis, MO.)

Note.—Application for temporary authority has been filed.

Decided March 26, 1980.

By the Commission, Review Board Number 5, Members Krock, Taylor, and Williams.

MC–F–14311F, filed January 30, 1980. BICENTENNIAL TRANSPORT, INC. (Bicentennial) (317 North Point Blvd., Baltimore, MD 21224)—purchase (portion)—TIDEWATER INLAND EXPRESS, INC. (Tidewater) (258 Rohoboth Blvd., Milford, DE 19963). Representative: Leonard A. Jaskiewicz, 1730 M Street, NW, Suite 501, Washington, DC 20036. Bicentennial seeks authority to purchase a portion of the interstate operating rights of Tidewater. Angelo R. Teeter, the majority stockholder of Bicentennial, also seeks authority to acquire control of said rights through the transaction. Bicentennial is purchasing that portion of Tidewater's operating rights in MC 87109 (Sub-21), which authorizes the transportation, as a motor common carrier, over regular route, of *general commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Baltimore, MD, and Alexandria, VA, over U.S. Hwy 1, serving all intermediate points and the off-route points in MD and VA within 5 miles of DC and points within 6 miles of Baltimore. Bicentennial is authorized to operate as a motor contract carrier, in interstate or foreign commerce, over irregular route, under continuing contracts with Forman Brothers, Inc., of Washington, DC, pursuant to Permits issued in MC–143991 and sub-numbers thereunder. (Hearing site: Washington, DC.)

Note.—Dual operations may be involved.

MC–F–14317F, filed February 14, 1980. DeHAVEN TRANSFER & STORAGE CO., INC. (DeHaven) (2009 Russell Avenue, SW, Roanoke, VA 24010)—purchase (portion)—GILBERT STORAGE & TRANSFER CORP. (Gilbert) (P.O. Box 10425, Lynchburg, VA 24506). Representative: John R. Sims, Jr., 915 Pennsylvania Bldg., 425 13th Street, NW., Washington, DC, 20004. DeHaven seeks authority to purchase a portion of the interstate operating rights of Gilbert. George L. DeHaven, the sole stockholder of DeHaven, also seeks authority to acquire control of said rights through the transaction. DeHaven is purchasing that portion of Gilbert's Certificate MC 4194 which authorizes operations, as a motor common carrier, over irregular routes, transporting *household goods,* as defined by the Commission, between points in VA, on the one hand, and, on the other, points in KY, NC, SC, TN, WV, MD, PA, DE, NJ, NY, and DC. DeHaven is authorized to operate as a motor common carrier, in interstate or foreign commerce, over irregular routes, transporting *used household goods* and *household goods* in the States of VA, WV, IN, KY, OH, NC, VA, IL, MI, PA, NY, and DC, pursuant to certificates in MC 129335 and sub-numbers thereunder. (Hearing site: Washington, DC.)

Note.—Application for temporary authority has been filed.

MC–F–14320F, filed February 20, 1980. HOUSTON FREIGHTWAYS, INC. (Houston) (P.O. Box 473, Galena Park, TX 77547)—purchase—TOM HICKS TRANSFER COMPANY, INC. (Hicks) (P.O. box 16006, Houston, TX 77022). Representatives: J. G. Dail, Jr., P.O. Box LL, McLean, VA 22101 and C. W. Ferebee, P.O. Box 16006, Houston, TX 77022. Houston seeks to purchase the interstate rights of Hicks. J. W. Dial and Ramsey Truck Line, Inc., who control Houston through equal stock ownership, seek to acquire control of said operating rights through the transaction. Houston is purchasing the interstate operating rights contained in Hicks' certificates in MC–63792 and (Sub-10, 12, 13, 14, 15, 17, 20, 24, 25, 26, 28, 30, E–1, E–2, E–3, E–4, E–5, E–6, E–7, E–8, E–9, E–10, and E–11), which authorize transportation, in interstate or foreign commerce, as a common carrier, by motor vehicle, of: (1) *Machinery, equipment, materials and supplies* used in, or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and by-products, and *Machinery, materials, equipment and supplies* used in, or in connection with, the construction, operation, repair, servicing, maintenance, and dismantling of pipe lines, including the stringing and picking-up thereof, except the stringing and picking-up of pipe in connection with main pipe lines, (a) between points in LA, TX, and AR, (b) between points in KS, OK, and TX, and (c) between points in TX, on the one hand, and, on the other, points in NM, CO, UT, and WY; (2) *Heavy machinery,* and *heavy or cumbersome commodities* not included in the authority granted above which, because of size or weight, require the use of special equipment, and *parts thereof,* Between Houston, TX, on the one hand, and, on the other, points in

AR, LA, and TX; (3) *Machinery, equipment, materials, and supplies* used in, or in connection with, the construction, operation, repair, servicing, maintenance, and dismantling of pipelines, other than pipelines used for the transmission of natural gas, petroleum, their products and by products, water, or sewerage, restricted to the transportation of shipments moving to or from pipeline rights of way, (a) between points in AL, FL, and GA, (b) between points in AR, LA, and MS, (c) between points in LA and MS, on the one hand, and, on the other, points in AL, FL, and GA, (d) between points in LA, TX, and AR, (e) between points in KS, OK, and TX, and (f) between points in TX, on the one hand, and, on the other, points in NM, CO, UT, and WY. (4) *Machinery, equipment, materials and supplies* used in, or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and by products, and *machinery, materials, equipment and supplies* used in, or in connection with, the construction, operation, repair, servicing, maintenance, and dismantling of pipe lines, including the stringing and picking-up thereof, except the stringing and picking-up of pipe in connection with main pipe lines, (a) between points in AL, FL, and GA, and (b) between points in LA, and MS, on the one hand, and, onthe other, points in AL, FL, and GA, (5) *Machinery, materials, supplies and equipment* incidental to, and used in, the construction, development, operation, and maintenance of facilities for the discovery, development, and production of natural gas and petroleum, *commodities,* the transportation of which requires the use of special equipment, and *related articles and supplies* when their transportation is incidental to the transportation of commodities which by reason of size or weight require special equipment, and *self-propelled articles* each weighing 15,000 pounds or more restricted to commodities which are transported on trailers, between points in AR, LA, and MS; (6) *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment), from Monroe and West Monroe, LA, to Bastrop, Ruston, and Winnsboro, LA, (7) *Earth drilling machinery and equipment,* and *machinery, equipment, materials, supplies* and *pipe* incidental to, used in, or in connection with (a) the transportation, installation, removal, operation, repair, servicing, maintenance, and dismantling of drilling machinery and equipment, (b) the completion of holes or wells drilled, (c) the production, storage, and transmission of commodities resulting from drilling operations at well or hole sites and (d) the injection or removal of commodities into or from holes or wells, (a) between points in AL, GA, and FL, (b) between points in LA, and MS, on the one hand, and, on the other, points in AL, GA, and FL, (c) between points in AR, LA, and MS, (d) between points in KS, OK, and TX, (e) between points in TX, on the one hand, and, on the other, points in NM, CO, UT, and WY, and (f) between points in LA, TX, and AR; (8) *Iron and steel articles,* (a) from Houston, TX, to points, in AR, LA, and TX, (b) from Baytown, TX, to points in AR, KS, LA, MS, NM, and OK, (c) between the facilities of Steel, Inc., at New Orleans, LA, on the one hand, and, on the other, points in AR, LA, MS, NW, TX (except points east of Interstate Hwy 45), OK (except points east of Interstate Hwy 35), and KS (except points east of interstate Hwy 35), (d) from points in Jefferson and Orange Counties, TX, to points in LA (9) *Iron and steel articles* (except oilfield pipe or tubing), from the palnt site of Gulf States Tube Corporation at Rosenberg, TX., to points in TX, LA, MS, AR, OK, and NM, restricted to the transportation of traffic originating at the named origins; (10 *Iron and steel articles,* except cast iron pipe, between the facilities of Romar Steel, Inc., at New Orleans and Morgan City, LA, Birmingham, AL, and Houston, TX, on the one hand, and, on the other, points in AL, AR, CO, FL, GA, KS, LA, MS, MO, NM, OK, TN, and TX; (11) *Pipe* (except oilfield and pipeline commodities as defined in *Mercer Extension—Oilfield Commodities,* 74 M.C.C. 459), from Gainesville, TX, to points in LA, MO, OK, and TX, restricted to the transportation of traffic originating at the facilities of the Jones & Loughlin Steel Corporation at Gainesville, TX; (12) *Plastic pipe,* and *plastic tubing,* from the plant site of Tex-Tube Division, Detroit Steel Corp., a division of Cyclops Corporation, at Houston, TX, to points in AR, AL, CO, TX, OK, KS, LA, NM, FL, MO, WY, UT, GA, and MS; (13) *Steel billets, bars and rods,* from the plant site and storage facilitries of Georgetown Texas Steel Corp., at or near Beaumont, TX, to points in AL, AR, FL, and TN, restricted to the transportation of traffic originating at the named origin facilities; (14) (1)(a) *Air pollution control equipment, heating and cooling equipment, pressure vessels, solid waste compactors and balers, and (1)(b) parts and accessories for the commodities indicated in (1)(a) above,* From Houston, TX, to points in AL, AZ, AR, CO, FL, GA, ID, IL, IA, IN, KS, KY, LA, MT, MI, MN, MS, MO, NE, NV, NM, NC, ND, OH, OK, SC, SD, TN, VA, WV, WI, WY, and UT: and (2) *Materials, supplies and parts and equipment used in the manufacture of air pollution control equipment, heating and cooling equipment, pressure vessels, solid waste compactors and balers,* From the above-named destinations, to the above-named origin. (15) *Slab Zinc Smelter,* From the facilities of National Zinc Company, at Bartlesville, OK, to points in AL, LA, MS, TX, KY, and TN. (16) *Commodities,* the transportation of which, because of size or weight require the use of special equipment, and *parts* thereof, when their transportation is incidental to the transportation of which commodities, (a) between Houston, TX, on the one hand, and, on the other, points in MS, AR, and LA, and (b) between points in AR, LA, and MS. Houston is authorized to operate in interstate or foreign commerce, as a motor common carrier, pursuant to its Certificate MC 143209. Ramsey Truck Line, Inc., holds no authority from the Commission. (Hearing site: Houston, TX.)

Notes.—(1) This notice does not purport to be a complete description of the operating rights of the carriers involved.

(2) An application for temporary authority has been filed.

MC–F–14252F, filed December 6, 1979. MAISLIN TRANSPORT OF DELAWARE, INC. (Delaware) (7401 Newman Blvd. LaSalle, Quebec H8N 1X4, Canada)—control and merger—GATEWAY TRANSPORTATION CO., INC. (Gateway) (445 Park Plaza Drive, P.O. Box 851, La Crosse, WI 54601). Representatives: A. David Millner, P.O. Box 1409, 167 Fairfield Road, Fairfield, NJ 07006 and Roland Rice, 116 Perpetual Bldg., 1111 E Street, NW, Washington, DC 20004. Delaware seeks to acquire control of Gateway through MI Acquisition Corporation (MIAC), a newly created subsidiary of Delaware. MIAC seeks to acquire from 50.1% to 100% of the issued and outstanding capital stock of Gateway. MIAC will be subsequently merged into Gateway, leaving Delaware as the holder of Gateway's stock. Maislin Transport, Ltd., of LaSalle, Quebec, Canada, the sole stock holder of Delaware, and in turn, Maislin Industries, Ltd., a non-carrier holding company of LaSalle, Quebec, Canada, and sole stockholder of Maislin Transport, Ltd., seeks to acquire control of Gateway through the transaction. Gateway is a motor common carrier pursuant to authority

issued in certificates in MC–80430 and sub-numbers thereunder which authorize the transporation, in interstate or foreign commerce, of numerous general and specified commodities, over regular and irregular routes, in AL, AR, CT, FL, GA, IL, IN, IA, KS, KY, MA, MI, MN, MO, NJ, NY, OH, PA, RI, TN, TX, WI, and WV. Delaware is a motor common carrier pursuant to authority issued in Certificates in MC–60580 and sub-numbers thereunder, which authorize the transportation of general and specified commodities, over regular and irregular routes, in CT, DE, MA, MD, ME, NH, NJ, PA, RI, VA, VT, WV, and DC. Maislin Transport, Ltd., is a motor common carrier pursuant to authority issued in certificates in MC–108006 and sub-numbers thereunder, which authorize the transportation of general and specified commodities, over regular and irregular routes, in CT, DE, MA, MD, ME, NH, NJ, NY, PA, RI, VA, VT, WV, and DC. Maislin Transport, Ltd., is a motor common carrier pursuant to authorty issued in Certificates in MC–108006 and sub-numbers thereunder, which authorize the transportation of general and specified commodities, over regular and irregular routes, in CT, ME, MA, NH, NJ, NY, PA, RI, and VT. Impediments: (1) There is a question of Maislin's financial ability to consummate the transaction and operate as proposed. (2) MI Acquisition Corporation must join as a party to the application. (3) Delaware is planning to sell, prior to consummation, its operating rights which duplicate those of Gateway. (4) Applicant must notify the Commission, in writing, prior to consummation, of the total percentage of stock to be acquired. (Hearing site: Washington, DC.)

Notes.—(1) Application has been filed for temporary authority. (2) FD–29211, Maislin Transport of Delaware, Inc.—Notes, Guarantees and Assumption of Obligations, and Gateway Transportation Co., Inc.—Notes and Guarantees, has been granted by order served February 4, 1980.

MC–F–14302F, filed January 17, 1980. J AND M TRANSPORTATION, INC. (J & M) (1079 Old Maricopa Road, Casa Grande, AZ 85222)—purchase (portion)—DAVID C. BURNS, d.b.a. BURNS TRUCKING (Burns) (1146 East Main Street, Casa Grande, AZ 85222). Representative: Donald E. Fernaays, Suite 320, 4040 East McDowell Road, Phoenix, AZ 85008. J & M seeks authority to purchase a portion of the interstate operating rights of Burns. Majorie Smerber and James Smerber who control J & M through equal stock ownership, seek to acquire control of said rights through the transaction. J & M is purchasing the interstate operating rights of Burns that are contained in Permit No. MC–141618 (Sub-No. 2) which authorizes the transportation, over irregular routes of *mineral wool insulation* (except in bulk), from Fontana, CA, to points in AZ, under continuing contract(s) with Rockwool Industries, Inc., of Fontana, CA. J & M presently holds no authority from the I.C.C. Majorie Smerber and James Smerber who control J & M through stock ownership, also control Smerber Trucking, Inc. They are president and vice president of both firms respectively. Smerber Trucking is authorized to operate as a contract carrier pursuant to its permit issued in MC 136821 (Sub-1). (Hearing site: Phoenix, AZ.)

Decided: March 19, 1980.

By the Commission, Review Board Number 5, Members Krock, Taylor, and Williams.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80–10082 Filed 4–2–80; 8:45 am]

BILLING CODE 7035–01–M

Motor Carrier Finance Applications; Decision Notice

As indicated by the findings below, the Commission has approved the following applications filed under 49 U.S.C. 10924, 10926, 10931 and 10932.

We find: Each transaction is exempt from section 11343 (formerly section 5) of the Interstate Commerce Act, and complies with the appropriate transfer rules.

This decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

Petitions seeking reconsideration must be filed on or before April 23, 1980. Replies must be filed within 20 days after the final date for filing petitions for reconsiderations; any interested person may file and serve a reply upon the parties to the proceeding. Petitions which do not comply with the relevant transfer rules at 49 CFR 1132.4 may be rejected.

If petitions for reconsideration are not timely filed, and applicants satisfy the conditions, if any, which have been imposed, the application is granted and they will receive an effective notice. The notice will indicate that consummation of the transfer will be presumed to occur on the 20th day following service of the notice, unless either applicant has advised the Commission that the transfer will not be consummated or that an extension of time for consummation is needed. The notice will also recite the compliance requirements which must be met before the transferee may commence operations.

Applicants must comply with any conditions set forth in the following decision-notices within 30 days after publication, or within any approved extension period. Otherwise, the decision-notice shall have no further effect.

By the Commission, Review Board Number 5, The Motor Carrier Board, Members Krock, Pohost, and Williams.

Agatha L. Mergenovich,

Secretary.

MC–FC–78307, filed September 20, 1979. Transferee: J & J DINA TRUCKING INC., 21 Barnstable Road, E. Rockaway, NJ 11518. Transferor: E. PERLER & SON, INC., 21 Barnstable Rd., W. Rockaway, NJ 11518. Representative: Robert B. Pepper, 168 Woodbridge Ave., Highland Park, NJ 08904. Authority sought for the purchase by transferee of the operating rights of transferor set forth in Permit MC 108024, issued May 21, 1969, authorizing the transportation of *tin cans*, from New York, NY to points in CT, NJ, NY, and PA within 100 miles of New York, NY; *rejected shipments* of tin cans, from the above-specified destination points to New York, NY; *scrap tin*, from New York, NY, to Carteret, NJ. Transferee presently holds no authority from this Commission. Application has been filed for temporary authority 49 U.S.C. 11349.

MC–FC–78310, filed September 20, 1979. Transferee: AMERICAN EAGLE MOTOR COACH, INC., 72 Sycamore Street, Fairhaven, MA 02719. Transferor: SOUTHERN MASSACHUSETTS BUS LINES, INC., 1091 Kempton Street, New Bedford, MA 02740. Representative: Charles A. Webb, Suite 800 South, 1800 M Street, N.W., Washington, D.C. 20036. Authority sought for the purchase of the operating rights of transferor, as set forth in Certificate MC 96345 and Sub-2, 3, and 4, issued April 29, 1949, August 21, 1963, May 19, 1966, and June 11, 1971, respectively, as follows: (A) *passengers and their baggage*, restricted to traffic originating at the points indicated, in round-trip charter operations, over irregular routes, from points and places in the towns of New Bedford, Achushnet, Fair Haven, and Dartmount, MA to points and places in ME, NH, RI, CT, NY, and NJ, and return; (B) and from points and places in the above-specified MA towns to points and places in MA, through CT and RI and return; *passengers and their baggage, and express, mail, and newspapers in the same vehicle with passengers, and*

baggage of passengers in a separate vehicle, over regular routes, between Hyannis, MA and Chatham, MA, serving all intermediate points; from Hyannis over MA Hwy 28 via Harwich Port, MA, to Chatham and return over the same route; (C) *passengers and their baggage,* in special operations, in round-trip sightseeing and pleasure tours, over irregular routes, beginning and ending at points in Barnstable County, MA, and those in Bristol and Plymouth Counties, MA, south of US Hwy 44, and extending to points in CT, DE, ME, MD, MA, NH, NJ, NY, PA, RI, VT, VA and the DC; and (D) *passengers and their baggage,* in the same vehicle with passengers, in special operations, in round-trip sightseeing and pleasure tours, over irregular routes, beginning and ending at Plymouth, Middleboro, and Centerville, MA and points in that part of Bristol County, MA, on and south of U.S. Highway 44 and extending to points in the US (except CT, DE, ME, MD, MA, NH, NJ, NY, PA, RI, VT, VA, HI, AK and the DC). Application for temporary authority has been filed under 49 U.S.C. 11349.

MC–FC–78329, filed September 28, 1979. Transferee: CHRISTOPHER RATCLIFFE d.b.a., RATCLIFFE DELIVERY, INC., 512 Lock Ave., Wheeling, WV 26003. Transferor: JACK C. STENGER, d.b.a., WHEELING PACKAGE DELIVERY, 512 Lock Ave., Wheeling, WV 26003. Authority sought for the purchase by transferee of the operating rights of transferor as set forth in Certificate No. MC–116252, issued April 11, 1957, authorizing the transportation of *Such commodities* as are sold by retail stores, speciality shops, and mail order department stores, in a retail delivery service, between Wheeling, WV, on the one hand, and, on the other, points in Monroe, Belmont, Harrison, and Jefferson Counties, OH. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under 49 U.S.C. 11349.

MC–FC–78350. By decision of February 27, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, The Motor Carrier Board approved the transfer to ALL-ROADS MOVING & STORAGE, INC., Fullerton, CA, of Certificate No. MC 64339, issued November 23, 1954, to LEONARD E. CARLSON AND LAWRENCE V. CARLSON, A Partnership, d.b.a. FULLERTON TRANSFER AND STORAGE, authorizing the transportation of *Household Goods* as defined by the Commission, between points in Orange County, CA north and west of the Santa Ana River; and between points in Orange County, CA north and west of the Santa Ana River, on the one hand, and, on the other, points in the Los Angeles, CA Commercial Zone, as defined by the Commission. Applicants' Representative: Mr. Vern E. Caumiant, 1400 E. Walnut, Fullerton, CA 92631.

Federal Register Summary for Certificate or Permit

MC–FC–78357. By decision of March 13, 1980 issued under 49 U.S.C. 10926 and the Transfer Rules at 49 C.F.R. 1132. The Motor Carrier Board approved the transfer to David Sellick d.b.a. Lost Trail Stages of Certificate No. MC 113730 (Sub-No. 1) issued 2/5/78 to Edward J. Osterman d.b.a. Lost Trail Stages authorizing the transportation of passengers and their baggage, and express and newspapers in the same vehicle with passengers, Between Salmon, ID and Darby, MT, serving all intermediate points: From Salmon over U.S. Highway 93, to Darby, and return over the same route. Representative: David Sellick, Route #1, Box 189, Salmon, ID 83467.

MC–FC–78372. On reconsideration, by decision of March 19, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, The Motor Carrier Board approved the transfer to Delta Transport Corporation, West Springfield, MA, of Certificate No. MC 143287, issued July 24, 1978, to Holmes and Holmes, Inc., Wilmington, DE authorizing the transportation of *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), from points in CT, ME, MA, NH, NJ, NY, PA, RI, and VT, to points in OH, PA, and WV; *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, accompanied baggage, commodities in bulk, those requiring special equipment, automobiles, trucks, and buses), from Baltimore, MD, to points in Allegheny, Beaver, Butler, Lawrence, Mercer, and Westermoreland Counties, PA. Restriction: The service authorized is subject to the following restrictions: Said authority is restricted to traffic moving on bills of lading issued by P.O.W. Freight Systems, Inc. Said authority in part (2) above is restricted to traffic having a prior movement in foreign commerce. Applicants' representative: James M. Burns, 1382 Main St., Suite 413, Springfield, MA 01103.

MC–FC–78403. By decision of February 14, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, The Motor Carrier Board approved the transfer to R. St. Amant-Mover, Inc., Cambridge, MA. of Certificates MC–96242 and MC–96242 (Sub-No. 1), issued November 23, 1940, and October 23, 1950, to Rosario St. Amant, Cambridge, MA, authorizing the transportation of *Household goods,* between Cambridge, MA and points within 25 miles of Cambridge, on the one hand, and, on the other, points in ME, NH, VT, RI, CT, NY, and NJ; *addressing machines,* and *equipment* incidental to and used in the operation of such machines, between Boston, Cambridge, and Watertown, MA, on the one hand, and, on the other, points in NY and NY within 35 miles of New York, NY, including New York, NY. Applicants' representative: Nicholas V. Scali, 30 Federal St., Boston, MA 02110.

MC–FC–78405. By decision of March 6, 1980 issued under 49 U.S.C. 10926 and the transfer rules and 49 CFR 1132, Division 1 approved the transfer to Great American Van Lines, Inc., Alexandria, VA of Certificates MC–110585 (Sub-Nos. 2 and 9), issued December 24, 1975, and July 12, 1978, respectively, to Republic Van & Storage Co., Inc., Baltimore, MD, authorizing the transportation of (1) *new furniture, refrigerators, motorcycles, oil well equipment and supplies, store fixtures, radio and radar equipment, candy, bicycles, tires and window shades,* from points in the Los Angeles, CA, Commercial Zone, as defined by the Commission, to points in the Los Angeles Harbor, CA, Commercial Zone, as defined by the Commission, restricted to shipments moving to territories or possessions of the United States; (2) *Emigrant movables,* between points in Logan County, OK, on the one hand, and, on the other, points in KS; and (3) household goods, as defined by the Commission, between points in AL, AR, CA, CO, CT, DE, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NE, NV, NH, NJ, NM, NY, NC, OH, OK, OR, PA, RI, SC, TN, TX, UT, VT, VA, WA, WV, WI, WY, and DC. Also, *Household goods,* as defined by the Commission, between points in HI (this certificate expires July 12, 1981). Approval of the transaction was conditioned as follows: (1) Prior to issuance of an effective notice in this proceeding, Mr. Jack Kagan, president and owner of transferee, shall submit a certified statement that he has terminated control and management of International Export Packers, Inc. (2) Prior to or concurrently with consummation, transferor shall settle its

debts with owner-operators and confirm this in writing to the Commission. Applicants' representatives: Alan F. Wohlstetter, 1700 K St. NW., Washington, DC 20006, for transferee, and John C. Bradley, 1600 Wilson Blvd., Arlington, VA 22209, for transferor.

MC–FC–78408. By decision of February 15, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, The Motor Carrier Board approved the transfer to T & T Pipe Hauling, Inc., North Lima, OH, of Permits MC–126193 and MC–126193 (Sub-Nos. 1 and 2), issued August 9, 1976, August 9, 1976, and February 10, 1977, respectively, to Sigle Trucking Co., North Lima, OH, authorizing the transportation of *Iron or steel pipe*, (1) from North Lima, OH, to points in PA and WV, (2) from North Lima, OH, to points in IN, (3) from the plant of PLEXCO, a division of Amsted Industries, Incorporated, of Franklin Park, IL, at Glenwillard, PA, to points in OH (except North Lima), (4) from Middletown, OH, to the plant site of PLEXCO, a division of Amsted Industries, at Glenwillard, PA, (5) from Wheeling, WV, Alliquippa, Wheatland, and Ambridge, PA, to the plant site of PLEXCO, a division of Amsted Industries, at North Lima, OH; and pipe and conduit, between North Lima, OH, and points in MI, all under continuing contract(s) with Plexco, a division of AMSTED Industries, Incorporated, of Franklin Park, IL. Applicants' representative: Joe F. Asher, 88 E. Broad St., Columbus, OH 43215.

MC–FC–78419. By decision of February 15, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, The Motor Carrier Board approved the transfer to Cole Freight Company, of Crestwood, IL, of Certificates Nos. MC–111398 Subs 2, 3, 6, 7, 1, 9, and 15, to Fischbach Trucking Co., of Akron, OH, authorizing generally the transportation of such commodities as are manufactured, processed, or dealt in by rubber or rubber product manufacturers; asbestos roofing shingles; conduit and pipe; aluminum sidings; battery boxes; and similar commodities, from and to named points in TN, OH, AR, MA, NY, IL, IN, CT, DE, RI, NJ, KY, MI, and PA. Applicants' representative: John P. McMahon, 100 East Broad St., Columbus, OH 43215.

MC–FC–78430. By decision of February 26, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, The Motor Carrier Board approved the transfer to Valley Express, Inc., of Glyndon, MN, Certificate No. MC–143659 (Sub-No. 4F) issued November 26, 1978, to Valley Trucking, Inc., of Fargo, ND, authorizing the transportation of *frozen potato products*, from the facilities of International Co-op, at or near Grand Forks, ND, to points in the United States (except Alaska, Hawaii, and North Dakota), restricted to the transportation of traffic originating at the named origin facilities. Applicant's representative is: Richard P. Anderson, 502 First National Bank Building, Fargo, ND 58126.

MC–FC–78442. By decision of January 29, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, The Motor Carrier Board approved the transfer to Arctic Slope Regional Construction, Inc., and Alaska General Construction Company, A Partnership, d.b.a. Arctic Slope/Alaska General Construction Company of Annex, Anchorage, Alaska of Certificate No. MC 123298 issued 2/18/63 to KAPS Transport (Alaska), Inc. Sharon Pendley, Trustee, of Fairbanks, Alaska authorizing the transportation of general commodities, except Classes A and B explosives, commodities in bulk, and household goods as defined by the Commission, between points in Alaska except points on the Alaska Panhandle south of Haines, Alaska. Applicant's representative is: Arthur R. Kauver, Esq., 810 West Second Avenue, Anchorage, Alaska 99501.

MC–FC–78453. By decision of February 28, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, The Motor Carrier Board approved the transfer to Sumrell Bus Service, Inc., of Hempstead, NY., of Certificate No. MC 34752, issued February 2, 1962 to Lincoln Coach Co., Inc., of Yonkers, NY, authorizing the transportation of passengers and their baggage, restricted to traffic originating at the point indicated in charter operations, from New York, NY., to points in Connecticut, New Jersey, Pennsylvania, Massachusetts, New Hampshire, Maine and the District of Columbia, and return. Applicant's representative is: Sidney J. Leshin, 575 Madison Ave., New York, NY. 10022.

MC–FC–78454. By decision of February 14, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, The Motor Carrier Board approved the transfer to Yorkville Van & Storage Co., Inc., of New York, NY., of Certificate No. MC–83144, issued May 27, 1966 to John Clausen, d.b.a. Yorkville Van & Storage Co., of New York, NY, authorizing the transportation of household goods, between points in New York, NY, on the one hand, and, on the other, points in CT, MA, NJ, NY, PA, and RI. Applicant's representative is: Alvin Altman, 888 Seventh Ave., New York, NY 10019. Transferee holds no authority from this Commission. An application seeking TA lease has not been filed.

MC–FC–78455. By decision of February 27, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, The Motor Carrier Board approved the transfer to Harold B. Legge Transport, Ltd., of Nova Scotia, Canada, of Certificates No. MC 125441 Subs 1 and 3, issued April 20, 1964 and November 11, 1972, to Ernest D'Angelo, of Nova Scotia, Canada, authorizing the transportation of *bananas*, and *fresh fruit, fresh berries* and *fresh vegetables* in mixed loads, *cardboard boxes*, knocked down, and *inserts* and *overwraps* for fish, from Boston, MA, to the Port of Entry on the United States-Canada Boundary line at or near Calais, Maine, to points in Massachusetts, New York, New Jersey and Pennsylvania, bananas from Albany, New York to ports of entry on the United States-Canada Boundary Line at or near Houlton and Calais, Maine. Applicant's representative is: John F. O'Donnell, 60 Adams St., P.O. Box 238, Milton, MA 02187. Transferee holds no authority from this Commission. An application seeking TA lease authority has been filed.

MC–FC–78457. By decision of February 14, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, The Motor Carrier Board approved the transfer to Corbet, Int., of Hawatha, KS, of Certificate No. MC 130 issued July 25, 1969 to Dallas L. Corbet, of Hawatha, KS, authorizing the transportation of livestock, over a regular route from Hawatha, KS to St. Joseph, MO, serving named intermediate and off-route points; and livestock, lumber, shingles, groceries, and farm machinery, from St. Joseph, MO, to Hawatha, KS, over a regular route, serving named intermediate and off-route points. Transferee holds no authority from the Commission. An application seeking TA lease has not been filed. Applicant's representative is: Eugene W. Hiatt, 207 Casson Bldg, 603 Topeka Blvd, Topeka, KS 66603.

MC–FC–78458. By decision of February 19, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, The Motor Carrier Board approved the transfer to Freight Carriers Towing & Recovery, Inc., of Atlanta, GA, of Certificate No. MC 143845 (Sub-No. 1) issued September 29, 1978 to Tank's Enterprises, Inc., of Austelle, GA, authorizing the transportation of disabled motor vehicles, by use of wrecker equipment only, and replacement vehicles for disabled motor vehicles, between points in Georgia, on

the one hand, and, on the other, points in Alabama, Florida, Mississippi, North Carolina, South Carolina, and Tennessee. Applicant's representative is: William N. Robinson, 231 Washington Avenue, N.E., Marietta, GA 30060.

BROKER LICENSE

MC–FC–78460. By decision of February 19, 1980 issued under 49 U.S.C. 10924 and the transfer rules at 49 CFR 1133, The Motor Carrier Board approved the acquisition by Frank Patrick, Inc., of Milwaukee, WI, of Control of Travel & Tour Service, Inc., of Milwaukee, WI, which hold License Nos. MC 12720, issued September 27, 1977, No. MC 12720 (Sub-No. 2), issued March 7, 1972, and No. MC–1270 (Sub-No. 3), issued August 6, 1975, authorizing operators, as a broker, at Milwaukee, WI, in connection with the transportation by motor vehicle, in interstate or foreign commerce, of passengers and group of passengers and their baggage, in charter and special operations, between points in the United States, including Alaska and Hawaii; at Milwaukee, WI, in connection with the transportation by motor vehicle, in interstate or foreign commerce, of passengers and their baggage, in charter and special operations, beginning and ending at Minneapolis and St. Paul, MN, and extending to points in the United States, including Alaska and Hawaii; and at Chicago, IL, in connection with the transportation by motor vehicle in interstate or foreign commerce, of passengers and their baggage in round-trip special or charter all-expense tours, beginning and ending at Chicago, IL, and extending to points in the United States, except Alaska and Hawaii. Applicant's representative is: William C. Dineen, 710 North Plankinton Ave., Milwaukee, WI 53203.

MC–FC–78461. By decision of February 15, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, The Motor Carrier Board approved the transfer to Leland C. Ridgeway, Jr., d.b.a. Ridgeway Transfer of Fairfield, NE, of Certificate No. MC–97764 (Sub-No. 1) issued July 7, 1972 to John A. Kluver, d.b.a. Kluver Transfer of Fairfield, NE, authorizing the transporation of *general commodities,* except those of unusual value, classes A and B explosives, household goods as defined by the Commission commodities requiring special equipment; between Edgar and Omaha, NE, serving the intermediate points in Lincoln and Sutton, NE, and the off-route points of Fairfield, Deweese, Angus, Shickley, and Davenport, NE; *general commodities,* except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commmodities in bulk, and those requiring special equipment, between Fairfield and Hastings, NE, serving no intermediate points, and serving Glenvil, NE, as an off-route point, *household goods,* between Edgar, NE, and points within 20 miles of Edgar, on the one hand, and, on the other, points in IA, KS, MO, CO, and IL. *Livestock* and *agricultural commodities,* between Edgar, NE, and points within 20 miles of Edgar, on the one hand, and, on the other, points in IA, KS, MO, SD, and CO. Applicant's representative is: Leland C. Ridgeway, Jr., Route 1, Fairfield, NE 68938.

Application for TA authority has not been filed. Transferee holds no authority.

MC–FC–78463. By decision of February 15, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, The Motor Carrier Board approved the transfer to A.V.L. Inc., of Akron, OH, of Certificates Nos. MC–96469 and MC–96469 (Sub-No. 1) issued May 21, 1951 to Art Nelson, Individual, of Crsytal Lake, IL, authorizing the transportation of (1) race and show horses, ponies, and mules, and stable supplies, and equipment and personal effects of attendants in the same vehicle with horses, ponies, and mules, between points in IL, IN, KY, MI, MO, OH, and WI; and (2) horses, other than ordinary horses, and personal effects of attendants, supplies and equipment, including mascots, used in the care and exhibition of such animals, between Chicago, IL, and points in IL within 500 miles of Chicago, and points in DE, RL, GA, IA, MN, MD, NJ, NY, NC, OK, PA, SC, TX, LA, AR, TN, VA, traversing MS, AL, and DC for operating convenience only. Applicant's representative is: Lewis S. Witherspoon, 88 East Broad street, Columbus, OH 43215.

Application for TA authority has been filed. Transferee presently hold no authority.

MC–FC–78464. By decision of February 15, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, The Motor Carrier Board approved the transfer to J & B transportation Co., Inc., of Fort Worth, TX, of Certificate of Registration No. MC 133506 issued March 16, 1978, to Mustang Transportation, Inc., of Shreveport, LA, evidencing a right to engage in transportation in interstate commerce corresponding in scope to state certificate No. 8930 dated October 4, 1976, issued by the railroad Commission of Texas, Transportation Division, authorizing (*SEE ATTACHMENT FOR AUTHORITY*). Applicant's representative is: A. William Brackett, Attorney, 1198 Continental Life Building, Fort Worth, TX 76102.

No TA authority application has been filed. Transferee presently holds no authority.

Attachment

To transport the following commodities between all points in Texas:

Outfield equipment and pipe, and other specified commodities.

[FR Doc. 80–10081 Filed 4–2–80; 8:45 am]

BILLING CODE 7035–01–M

Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after March 1, 1979, are governed by Special Rule 247 of the Commission's *Rules of Practice* (49 CFR 1100.247). These rules provide, among other things, that a petition for intervention, either in support of or in opposition to the granting of an application, must be filed with the Commission within 30 days after the date notice of the application is published in the **Federal Register.** Protests (such as were allowed to filings prior to March 1, 1979) *will be rejected.* A petition for intervention without leave must comply with Rule 247(k) which requires petitioner to demonstrate that it (1) holds operating authority permitting performance of any of the service which the applicant seeks authority to perform, (2) has the necessary equipment and facilities for performing that service, and (3) has performed service within the scope of the application either (a) for those supporting the application, or, (b) where the service is not limited to the facilities of particular shippers, from and to, or between, any of the involved points.

Persons unable to intervene under Rule 247(k) may file a petition for leave to intervene under Rule 247(1) setting forth the specific grounds upon which it is made, including a detailed statement of petitioner's interest, the particular facts, matters, and things relied upon, including the extent, if any, to which petitioner (a) has solicited the traffic or business of those supporting the application, or, (b) where the identity of those supporting the application is not included in the published application notice, has solicited traffic or business identical to any part of that sought by applicant within the affected marketplace. The Commission will also consider (a) the nature and extent of the property, financial, or other interest of the petitioner, (b) the effect of the decision which may be rendered upon petitioner's interest, (c) the availability

of other means by which the petitioner's interest might be protected, (d) the extent to which petitioner's interest will be represented by other parties, (e) the extent to which petitioner's participation may reasonably be expected to assist in the development of a sound record, and (f) the extent to which participation by the petitioner would broaden the issues or delay the proceeding.

Petitions not in reasonable compliance with the requirements of the rule may be rejected. An original and one copy of the petition to intervene shall be filed with the commission indicating the specific rule under which the petition to intervene is being filed, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named.

Section 247(f) provides, in part, that an applicant which does not intend to timely prosecute its application shall promptly request that it be dismissed, and that failure to prosecute an application under the procedures of the commission will result in its dismissal.

If an applicant has introduced rates as an issue it is noted. Upon request, an applicant must provide a copy of the tentative rate schedule to any protestant.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication.*

Any authority granted may reflect administrative acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

Findings: With the exception of those applications involving duly noted problems (e.gs., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each common carrier applicant has demonstrated that its proposed service is required by the present and future public convenience and necessity, and that each contract carrier applicant qualifies as a contract carrier and its proposed contract carrier service will be consistent with the public interest and the transportation policy of 49 U.S.C. § 10101. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulation. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In those proceedings containing a statement or note that dual operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a petitioner, that the proposed dual operations are consistent with the public interest and the transportation policy of 49 U.S.C. § 10101 subject to the right of the Commission, which is expressly reserved, to impose such terms, conditions or limitations as it finds necessary to insure that applicant's operations shall conform to the provisions of 49 U.S.C. § 10930(a) [formerly section 210 of the Interstate Commerce Act.]

In the absence of legally sufficient petitions for intervention, filed on or before May 5, 1980 (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of the decision-notice. To the extent that the authority sought below may duplicate an applicant's other authority, such duplication shall be construed as conferring only a single operating right.

Applicants must comply with all specific conditions set forth in the following decision-notices on or before May 5, 1980, or the application shall stand denied.

Note.—All applications are for authority to operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, except as otherwise noted.

Volume No. 33

Decided: March 5, 1980.

By the Commission, Review Board Number 1. Members Carleton, Joyce and Jones.

MC 8515 (Sub-32F), filed November 8, 1979. Applicant: TOBLER TRANSFER, INC., Jct. Interstate 80 and IL Hwy 89, Spring Valley, IL 61362. Representative: Leonard R. Kofkin, 39 South LaSalle St., Chicago, IL 60603. Transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (a) between Burlington, IA, Quincy, Springfield, Decatur, and Delavan, IL, and LaFayette, IN, on the one hand, and, on the other, those points in IL on and north of U.S. Hwy 36, and (b) between Burlington, IA, Quincy, Springfield, Decatur and Delavan, IL, on the one hand, and, on the other, LaFayette, IN. (Hearing site: Chicago, IL.)

MC 7555 (Sub-74F), filed November 13, 1979. Applicant: TEXTILE MOTOR FREIGHT, INC., P.O. Box 70, Ellerbe, NC 28338. Representative: Terrence D. Jones, 2033 K Street NW., Washington, DC 20006. Transporting (1) *paints and chalking compound, and materials, equipment, and supplies used in the manufacture thereof* (except in bulk), between the facilities of United Coatings, Inc., at (2) Charlotte, NC, (b) Chicago, IL, (c) Indianapolis, IN, and (d) Memphis, TN, on the one hand, and, on the other, those points in the United States in and east of MN, IA, MO, AR, and LA. (Hearing site: Washington, DC.)

Note.—Dual operations may be involved.

MC 13434 (Sub-82F), filed November 14, 1979. Applicant: GRANT TRUCKING, INC., P.O. Box 256, Oak Hill, OH 45656. Representative: David A. Turano, 100 East Broad St., Columbus, OH 43215. Transporting *iron and steel articles,* from points in IN, IL, and PA, to the facilities of Brown Steel Co., at Columbus, OH. (Hearing site: Columbus, OH.)

MC 22195 (Sub-181F), filed November 6, 1979. Applicant: DAN DUGAN TRANSPORT COMPANY, a corporation, 41st & Grange Ave., Sioux Falls, SD 57105. Representative: F. Fred Fischer (same address as applicant). Transporting (1) *fertilizer and fertilizer ingredients,* from Grand Forks, Drayton, Fargo, Carrington, Lignite and Enderlin, ND, and Crookston, MN, to ports of entry on the United States-Canada international boundary in ND and MN, (2) *liquid fertilizer and fertilizer ingredients (except anhydrous ammonia),* in bulk, in tank vehicles, from Grand Forks, ND and Climax, MN, to ports of entry on the United States-Canada international boundary line in ND, and MN, (3) *anhydrous ammonia,* in bulk, in tank vehicles, from Velva, ND, to points in MT, SD, and MN, and (4) *fertilizer and fertilizer ingredients,* from Hendrum, MN, to points in ND, SD, and MN. (Hearing site: Moorhead, MN, or Sioux Falls, SD.)

MC 30844 (Sub-661F), filed November 14, 1979. Applicant: KROBLIN REFRIGERATED XPRESS, INC., P.O. Box 5000, Waterloo, IA 50704. Representative: John P. Rhodes (same address as applicant). Transporting *foodstuffs* (except in bulk, in tank vehicles), from the facilities of Sanna Division of Beatrice Foods Co., at Menomonie, Cameron, Vesper, Wisconsin Rapids, and Eau Claire, WI, to points in the United States (except AK & HI), restricted to transportation traffic originating at the named origins and destined to the indicated destinations. Conditions: The person or

persons who appear to be engaged in common control of applicant and another regulated carrier must either file an application under 49 U.S.C. § 11343 or submit an affidavit indicating why such approval is unnecessary. Affidavits are due 20 days from the date of publication. (Hearing site: Chicago, IL.)

MC 44735 (Sub-47F), filed November 13, 1979. Applicant: KISSICK TRUCK LINES, INC., 7101 East 12th, Kansas City, MO 64126. Representative: William B. Barker, 641 Harrison St., Topeka, KS 66603. Transporting (1) *clay (except in bulk), concrete products, and refractory products,* between points in AR, KS, MO, OK, IL, IA, NE, and TX, on the one hand, and, on the other, points in LA, MS, and TN, (2) *refactory products,* (a) between points in IL, IA, and NE, on the one hand, and, on the other, points in AR, KS, MO, OK, and TX, and (b) between points in AR, KS, MO, OK, and TX, and (3) *materials and supplies* used in the manufacture and installation of (1) and (2) above, (except in bulk), between points in AR, KS, MO, OK, TX, LA, MS, IL, IA, NE, and TN. (Hearing site: Kansas City, MO, or Oklahoma City, OK.)

MC 61825 (Sub-117F), filed November 14, 1979. Applicant: ROY STONE TRANSFER CORPORATION, V. C. Drive, P.O. Box 385, Collinsville, VA 24078. Representative: John D. Stone (same address as applicant). Transporting (1) *animal feed* (except in bulk), from Columbus, OH, to points in NC, SC, and VA, and (2) *prefabricated buildings and parts,* from Youngstown, OH, to points in GA. (Hearing site: Washington, DC.)

MC 61825 (Sub-124F), filed November 14, 1979. Applicant: ROY STONE TRANSFER CORPORATION, V. C. Drive, P.O. Box 385, Collinsville, VA 24078. Representative: John D. Stone (same address as applicant). Transporting (1) *paper and paper products, and materials, equipment, and supplies used in the manufacture and distribution of paper and paper products* (except commodities in bulk), between the facilities of Olinkraft, Inc., at or near Monroe-West Monroe, LA, on the one hand, and, on the other, those points in the United States in and east of AL, IL, KY, TN, and WI, and (2) *bound books,* from Grand Rapids, MI, to Fincastle, VA. (Hearing site: Washington, DC.)

MC 65475 (Sub-29F), filed November 14, 1979. Applicant: JETCO, INC., 4701 Eisenhower Ave., Alexandria, VA 22304. Representative: J. G. Dail, Jr., P.O. Box LL, McLean, VA 22101. Transporting *tanks, tank components, and ducts,* from the facilities of Witherup Fabrication and Erection, Inc., at or near Kennerdell, PA, to points in the United States (except AK, and HI). (Hearing site: Washington, DC.)

MC 65475 (Sub-30F), filed November 14, 1979. Applicant: JETCO, INC., 4701 Eisenhower Ave., Alexandria, VA 22304. Representative: J. G. Dail, Jr., P.O. Box LL, McLean, VA 22101. Transporting (1) *iron and steel articles,* and (2) *materials, equipment, and supplies* used in the manufacture of iron and steel articles, between Springfield, VA, and Burnsville, MN, on the one hand, and, on the other, points in AL, CT, DE, FL, GA, IL, IN, IA, KY, MD, MA, MI, MN, MS, MO, NH, NJ, NY, NC, ND, OH, PA, RI, SC, SD, TN, VT, VA, WV, and WI. (Hearing site: Washington, DC.)

MC 85934 (Sub-111F), filed November 14, 1979. Applicant: MICHIGAN TRANSPORTATION CO., a corporation, 3601 Wyoming, P.O. Box 248, Dearborn, MI 48120. Representative: Martin J. Leavitt, 22375 Haggerty Road, P.O. Box 400, Northville, MI 48167. Transporting *fly ash,* in bulk, in tank vehicles, from points in Lucas County, OH, to points in Monroe County, MI. (Hearing site: Chicago, IL, or Washington, DC.)

MC 90794 (Sub-7F), filed November 14, 1979. Applicant: DI-JUB LEASING CORP., P.O. Box 155 Uptown, Hoboken, NJ 07030. Representative: Thomas F. X. Foley, State Highway 34, Colts Neck, NJ 07722. Transporting (1) *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), in containers or in trailers, having a prior or subsequent movement by water, between the facilities of Seatrain Lines, Inc., at or near (a) Wilmington, NC, (b) Philadelphia, PA, (c) Charleston, SC, (d) Norfolk, VA, and (e) New York, NY, on the one hand, and, on the other, points in CT, DE, MD, MA, NH, NJ, NY, NC, PA, SC, VA, and DC, and (2) *cargo containers* and *chassis* for cargo containers, between points in CT, DE, MD, MA, NH, NJ, NY, NC, PA, RI, SC, VA, and DC. (Hearing site: Newark, NJ, or New York, NY.)

MC 94265 (Sub-326F), filed November 6, 1979. Applicant: BONNEY MOTOR EXPRESS, INC., P.O. Box 720434, Windsor, VA 23487. Representative: Clyde W. Carver (same address as applicant). Transporting *manufactured tobacco and tobacco products, and packaging materials,* from the facilities of R. J. Reynolds Tobacco Company, at Winston-Salem, NC, to points in ND. (Hearing site: Winston-Salem, NC, or Washington, DC.)

MC 94265 (Sub-327F), filed November 6, 1979. Applicant: BONNEY MOTOR EXPRESS, INC., P.O. Box 720434, Windsor, VA 23487. Representative: Clyde W. Carver (same address as applicant). Transporting *toilet preparations,* from the facilities of Iodent Way Chemical Company, Inc., at Elizabethton, TN, to points in GA, IN, KS, MA, MI, NV, NJ, NY, NC, OH, PA, RI, SC, TX, VA, and WV. (Hearing site: Atlanta, GA, or Washington, DC.)

MC 101474 (Sub-27F), filed November 14, 1979. Applicant: RED TOP TRUCKING CO., INC., 7020 Cline Ave., Hammond, IN 46323. Representative: Alki E. Scopelitis, 1301 Merchants Plaza, Indianapolis, IN 46204. Transporting (1) *iron and steel articles,* and (2) *materials, equipment and supplies* used in their manufacture (except commodities in bulk, in tank vehicles), between the facilities of Inland Steel Company, at East Chicago, IN, on the one hand, and, on the other, those points in the United States in and east of ND, SD, NE, CO, OK, and TX. (Hearing site: Chicago, IL, or Indianapolis, IN.)

MC 105045 (Sub-125F), filed October 31, 1979. Applicant: R. L. JEFFRIES TRUCKING CO., INC., P.O. Box 3277, Evansville, IN 47701. Representative: Richard C. McGinnis, 711 Washington Building, Washington, DC 20005. Transporting *plastic pipe,* from the facilities of Can-Tex Industries, Division of Harsco Corporation, at or near Sparta, TN, to those points in the United States in and east of WI, IL, KY, TN, and MS. (Hearing site: Nashville, TN, or Washington, DC.)

MC 106674 (Sub-445F), filed November 14, 1979. Applicant: SCHILLI MOTOR LINES, INC., P.O. Box 123, Remington, IL 47977. Representative: Jerry L. Johnson (same address as applicant). Transporting (1) *construction materials,* and (2) *materials and supplies* (except in bulk) used in their manufacture or distribution, between the facilities of the Celotex Corporation, at or near Texarkana, AR, on the one hand, and, on the the other, points in IL, IN, KY, NC, SC, and TN. (Hearing site: Chicago, IL, or Indianapolis, IN.)

MC 107515 (Sub-1297F), filed October 31, 1979. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. Serby, 3390 Peachtree Road, N.E., 5th Floor, Lenox Towers South, Atlanta, GA 30326. Transporting *foodstuffs,* from the facilities of J. Hungerford Smith Co., Inc., at or near Humboldt, TN, to points in the United States (except AK, and HI). (Hearing site: Memphis, TN.)

Note.—Dual operations may be involved.

MC 107515 (Sub-1298F), filed October 31, 1979. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. Serby, 3390 Peachtree Road, N.E., 5th Floor, Lenox Towers South, Atlanta, GA 30326. Transporting (1) *intravenous solutions,* and (2) *commodities used in the application* of intravenous solutions, from the facilities of Travenol Laboratories, at or near Memphis, TN, to Atlanta, GA. (Hearing site: Chicago, IL.)

Note.—Dual operations may be involved.

MC 109124 (Sub-99F), filed November 14, 1979. Applicant: SENTLE TRUCKING CORPORATION, P.O. Box 7850, Toledo, OH 43619. Representative: James M. Burtch, 100 E. Broad Street, Suite 1800, Columbus, OH 43215. Transporting (1) *insulating material,* and (2) *materials, equipment and supplies* used in the manufacture, distribution and installation of insulating materials, between the facilities of Owens-Corning Fiberglas Corporation, at Newark, OH, on the one hand, and, on the other, points in United States (except AK and HI). (Hearing site: Columbus, OH.)

MC 109124 (Sub-100F), filed November 14, 1979. Applicant: SENTLE TRUCKING CORP., P.O. Box 7850, Toledo, OH 43619. Representative: James M. Burtch, 100 E. Broad Street, Suite 1800, Columbus, OH 43215. Transporting (1) *pulpboard, wallboard, and fiberboard,* and (2) *materials, equipment and supplies* used in the manufacture, distribution, and installation of the commodities of (1) above, between the facilities of Owens-Corning Fiberglas Corporation, at or near Meridian, MS, on the one hand, and, on the other, those points in the United States on and east of a line beginning at the mouth of the Mississippi River, and extending along the Mississippi River to its junction with the western boundary of Itasca County, MN, then northward along the western boundaries of Itasca and Koochiching Counties, MN, to the international boundary line between the United States and Canada. (Hearing site: Columbus, OH.)

MC 109584 (Sub-206F), filed November 14, 1979. Applicant: ARIZONA-PACIFIC TANK LINES, a corporation, 3980 Quebec St., P.O. Box 7240, Denver, CO 80207. Representative: Rick Barker (same address as applicant). Transporting *fertilizer,* in bulk, in tank vehicles, from points in Maricopa County, AZ, to points in Dona Ana and Luna Counties, NM. (Hearing site: Phoenix, AZ, or Los Angeles, CA.)

MC 111375 (Sub-120F), filed November 15, 1979. Applicant: PIRKLE REFRIGERATED FREIGHT LINES, INC., P.O. Box 3358, Madison, WI 53704. Representative: Bernard J. Kompare, Suite 1600, 10 S. LaSalle St., Chicago, IL 60603. Transporting *such commodities* as are dealt in by manufacturers of (1) chemicals, (2) cleaning and scouring compounds, and (3) plastic film, sheeting and laminating equipment, (except commodities in bulk), from the facilities of Thiokol/Dynachem Corporation, in Orange County, CA, to points in IL, and IN, restricted to the transportation of traffic originating at the named origins and destined to the indicated destinations. (Hearing site: Los Angeles, CA.)

MC 115654 (Sub-185F), filed November 14, 1979. Applicant: TENNESSEE CARTAGE CO., INC., P.O. Box 23193, Nashville, TN 37202. Representative: Henry E. Seaton, 929 Pennsylvania Bldg., 425 13th St., N.W., Washington, DC 20004. Transporting *meats, meat products, meat byproducts, dairy products, and articles distributed by meat-packing houses,* in vehicles equipped with mechanical refrigeration, from Memphis, TN, to St. Louis, MO, and points in IL, IN, KY, and OH. (Hearing site: Nashville, TN, or Chicago, IL.)

MC 116254 (Sub-301F), filed November 6, 1979. Applicant: CHEM-HAULERS, INC., 118 East Mobile Plaza, Florence, AL 35630. Representative: Mr. Hampton M. Mills (same address as applicant). Transporting *iron and steel articles,* from Atlanta, GA, to those points in the United States in and east of MN, IA, MO, AR, and TX. (Hearing site: Nashville, TN, or Washington, DC.)

MC 116915 (Sub-105F), filed November 7, 1979. Applicant: ECK MILLER TRANSPORTATION CORP., Rt. #1, Box 248, Rockport, IN 47635. Representative: Fred F. Bradley, P.O. Box 773, Frankfort, KY 40602. Transporting (1) *aluminum and aluminum articles,* and (2) *materials, equipment, and supplies* used in the manufacture thereof (except commodities in bulk), between the facilities of Howmet Corporation, at or near Rockwall, TX, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: New York, NY.)

MC 117574 (Sub-342F), filed November 8, 1979. Applicant: DAILY EXPRESS, INC., P.O. Box 39, 1076 Harrisburg Pike, Carlisle, PA 17013. Representative: E. S. Moore, Jr. (same address as applicant). Transporting *such commodities* as are dealt in or used by dealers and manufacturers of agricultural equipment, industrial equipment, and lawn and leisure products (except commodities in bulk and automobiles, trucks, buses, as described in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 61 M.C.C. 760), from the facilities of Sperry New Holland Division, Sperry Corporation, at or near Columbus, NE, to points in AL, CT, DE, FL, GA, KY, MA, MD, ME, MS, NC, NH, NJ, NY, OH, PA, RI, SC, TN, VA, VT, and WV, restricted to the transportation of traffic originating at the named facilities and destined to the indicated destinations (except on traffic moving in foreign commerce). (Hearing site: Chicago, IL, or Washington, DC.)

MC 117574 (Sub-343F), filed November 9, 1979. Applicant: DAILY EXPRESS, INC., P.O. Box 39, 1076 Harrisburg Pike, Carlisle, PA 17013. Representative: E. S. Moore, Jr. (same address as applicant). Transporting (1) *machinery and equipment* used in the installation, assembly thereof, between Baltimore, MD, Cleveland, OH, Lancaster, PA, New York, NY, and Pittsburgh, PA, on the one hand, and, on the other, points in CT, DE, IL, IN, IA, KY, ME, MD, MA, MI, MN, MO, NH, NJ, NY, OH, PA, RI, VT, VA, WV, WI, and DC, restricted to the transportation of traffic moving in foreign commerce. (Hearing site: Washington, DC.)

MC 117574 (Sub-344F), filed November 8, 1979. Applicant: DAILY EXPRESS, INC., P.O. Box 39, 1076 Harrisburg Pike, Carlisle, PA 17013. Representative: E. S. Moore, Jr. (same address as applicant). Transporting (1) *building materials* and (2) *materials, equipment, and supplies* used in the production of color television picture tubes, and (2) *accessories, parts, materials and supplies* used in the installation and erection thereof, from the facilities of The Celotex Corporation at Sunbury, PA, to points in CT, DE, GA, IL, IN, IA, KY, MA, MD, ME, MI, MN, MO, NC, NH, NJ, NY, OH, PA, RI, SC, TN, VA, VT, WV, WI, and DC, restricted to the transportation of traffic originating at the named facilities. (Hearing site: Harrisburg, PA, or Washington, DC.)

MC 117765 (Sub-276F), filed November 6, 1979. Applicant: HAHN TRUCK LINES, INC., 1100 S. MacArthur, P.O. Box 75218, Oklahoma City, OK 73147. Representative: R. E. Hagan (same address as applicant). Transporting (1) *plumbing goods,* (2) *bathroom vanities and accessories,* and (3) *equipment, materials and supplies* used in the manufacture and distribution of the commodities named in (1) and (2) above, (except commodities in bulk), between Phoenix, AZ, Redlands, CA, Union Point and Monroe, GA, Renssalaer and Crawfordsville, IN, Leominster, MA, Ottumwa, IA, Salem, OH, New Castle, PA, Hondo and Corsicana, TX, and Milwaukee, WI, on the one hand, and,

on the other, points in the United States (except AK and HI), restricted to the transportation of traffic originating at or destined to the facilities of Universal-Rundle Corporation. (Hearings site: Oklahoma City, OK.)

MC 119654 (Sub-85F), filed November 14, 1979. Applicant: HI-WAY DISPATCH, INC., 1401 West 26th St., P.O. Box 509, Marion, IN 46952. Representative: Norman R. Garvin, 1301 Merchants Plaza, Indianapolis, IN 46204. Transporting *scrap and waste paper,* from points in IL, and WI, to points in IN, restricted to the transportation of traffic destined to the facilities of Clevepak Corporation. (Hearing site: Indianapolis, IN, or Chicago, IL.)

MC 123405 (Sub-77F), filed October 31, 1979. Applicant: FOOD TRANSPORT, INC., R.D. #1, Thomasville, PA 17364. Representative: Christian V. Graf, 407 North Front Street, Harrisburg, PA 17101. Transporting *frozen foodstuffs,* from the facilities of Imperial Freight Brokers, Inc., at Miami, FL, to Hanover, PA, restricted to the transportation of traffic originating at and destined to the named points. (Hearing site: Indianapolis, IN, or Chicago, IL.)

MC 124154 (Sub-99F), filed November 14, 1979. Applicant: WINGATE TRUCKING COMPANY, INC., P.O. Box 645, Albany, GA 31702. Representative: W. D. Wingate (same address as applicant). Transporting *machinery and machinery parts, wooden bobbins, and materials and supplies used in the manufacture,* between Greenville, SC, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Atlanta, GA, or Washington, DC.)

MC 124154 (Sub-103F), filed November 14, 1979. Applicant: WINGATE TRUCKING COMPANY, INC., P.O. Box 645, Albany, GA 31702. Representative: W. D. Wingate (same address as applicant). Transporting (1) *agricultural chemicals,* and (2) *materials, supplies and equipment used in the manufacture* of the commodities in (1) above, between points in the United States (except AK and HI), restricted to the transportation of traffic originating at or destined to the facilities of FMC Corporation's Agricultural Chemical Group. (Hearing site: Atlanta, GA, or Washington, DC.)

MC 134645 (Sub-32F), filed November 6, 1979. Applicant: LAKE STATE TRANSPORT, INC., P.O. Box 944, Highway 75 South, St. Cloud, MN 56301. Representative: Anthony E. Young, 29 S. LaSalle St., Suite 350, Chicago, IL 60603. Transporting *foodstuffs* (except in bulk), from New Hope and Minneapolis, MN, to points in WA, OR, CA, AZ, CO, ID, UT, NV, and MT, restricted to the transportation of traffic originating at the facilities of Creamette, Inc. (Hearing site: Minneapolis, MN.)

MC 134645 (Sub-33F), filed November 8, 1979. Applicant: LAKE STATE TRANSPORT, INC., P.O. Box 944, Highway 75 South, St. Cloud, MN 56301. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN. Transporting (1) *small arms ammunition,* (2) *steel junction boxes,* and (3) *materials, supplies and equipment* used in the manufacture and distribution of (1) and (2), (except commodities in bulk), from Anoka, MN, to points in the United States (except AK and HI). (Hearing site: St. Paul, MN.)

MC 135524 (Sub-93F), filed November 14, 1979. Applicant: G.F. TRUCKING CO., a corporation, P.O. Box 229, 1028 West Rayen Avenue, Youngstown, OH 44501. Representative: George Fedorisin, 914 Salts Springs Road, Youngstown, OH 44509. Transporting *lumber, lumber mill products, forest products, and wood products,* from points in CA, ID, MT, OR, and WA, to points in AZ, AR, CO, IL, IN, IA, KS, LA, MI, MN, MO, NE, NM, ND, OK, SD, TX, WI, and WY. (Hearing site: Columbus, OH, or Oklahoma City, OK.)

MC 136315 (Sub-96F), filed November 6, 1979. Applicant: OLEN BURRAGE TRUCKING, INC., Route 9, Box 28, Philadelphia, MS 39350. Representative: Fred W. Johnson, Jr., 1500 Deposit Guaranty Plaza, P.O. Box 22628, Jackson, MS 39205. Transporting (1) *plastic articles,* from the facilities of Peerless Plastics, Inc., at or near Garden City, KS, and York, NE, to points in the United States in and east of TX, OK, KS, NE, SD, and ND, and (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities named in (1) above, (except in bulk, in tank vehicles), in the reverse direction. (Hearing site: Kansas City, KS, or Washington, DC.)

Note.—Dual operations may be involved.

MC 138875 (Sub-252F), filed November 6, 1979. Applicant: SHOEMAKER TRUCKING COMPANY, a corporation, 11900 Franklin Road, Boise, ID 83709. Representative: F. L. Sigloh (same address as applicant). Transporting *heating and airconditioning units,* from points in KS, to points in ID, OR, and WA. (Hearing site: Boise, ID, or Washington, DC.)

MC 138875 (Sub-262F), filed November 7, 1979. Applicant: SHOEMAKER TRUCKING COMPANY, a corporation, 11900 Franklin Road, Boise, ID 83709. Representative: F. L. Sigloh (same address as applicant). Transporting *gum shellac (except in bulk),* from points in MA, to points in CA, OR, and WA. Hearing site: Portland, OR, or Boise, ID.)

MC 140635 (Sub-22F), filed November 15, 1979. Applicant: ADAMS LINES, INC., 2619 N. Street, Omaha, NE 68107. Representative: John L. Hornung (same address as applicant). Transporting *meats, meat products, meat byproducts, and articles distributed by meat-packing houses,* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the facilities of Armour Food Company, at or near Madison, NE, to points in CT, DE, ME, MD, MA, NH, NJ, NY, NC, OH, PA, RI, VT, VA, WV, and DC, restricted to the transportation of traffic originating at the named origin and destined to the indicated destinations. (Hearing site: Omaha, NE.)

MC 140755 (Sub-73F), filed November 14, 1979. Applicant: BRAY TRANSPORTS, INC., P.O. Box 270, 1401 North Little Street, Cushing, OK 74023. Representative: Dudley G. Sherrill (same address as applicant). Transporting *petroleum products,* in bulk, from Tulsa, OK, to points in MO. (Hearing site: Tulsa, OK, and Kansas City, KS.)

MC 143154 (Sub-7F), filed November 8, 1979. Applicant: ARTHUR E. PAMIN, JR. AND STEVEN V. BIDLAKE, a partnership, d.b.a. A & S TRUCKING, 6450 Highway 10 West, Missoula, MT 59801. Representative: Charles A Murry, Jr., 207A Behner Building, 2822 Third Avenue North, Billings, MT 59101. Transporting *wine and ale,* (1) from points in WA, OR, and CA, to points in MT, and ID, and (2) from points in OR and CA, to Pullman, Clarkston, and Spokane, WA. (Hearing site: Billings, or Missoula, MT.)

MC 145895 (Sub-3F), filed November 1, 1979. Applicant: STATE TRANSPORTATION, INC., Route No. 1 Bypass, P.O. Box 1349, Portsmouth, NH 03801. Representative: Robert G. Parks, 20 Walnut St., suite 101, Wellesley Hills, MA 02181. Transporting *malt beverages, in containers,* from points in Onondaga and Oswego Counties, NY, to points in NH, under continuing contract(s) with Silver Bros. Co., Inc., of Manchester, NH. (Hearing site: Boston, MA.)

MC 148045 (Sub-2F), filed November 6, 1979. Applicant: QUAD CITY SPOTTING SERVICE, INC., P.O. Box 390, Bettendorf, IA 52722. Representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods, and commodities in

bulk), between Moline, IL, on the one hand, and, on the other, points in Bureau, Henry, Knox, Mercer, Peoria, Rock Island, Stark, Warren, and Whiteside Counties, IL, and Cedar, Clinton, Des Moines, Johnson, Jackson, Jones, Lee, Louisa, Linn, Muscatine, Scott, and Washington Counties, IA, restricted to traffic having a prior or subsequent movement by rail. (Hearing site: Chicago, IL.)

Note.—Dual operations may be involved.

MC 148204 (Sub-2F), filed November 7, 1979. Applicant: MINDY TRANSPORTING CORP., 250 Gorge Road, Cliffside Park NJ 07010. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *Contract carrier,* transporting (1) *games,* (2) *toys,* and (3) *materials and supplies* used in the manufacture of games and toys (except commodities in bulk), between New York, NY, on the one hand, and, on the other, points in CT, MA, RI, NY, NJ, PA, DE, and MD, under continuing contract(s) with the Knickerbocker Toy Co., of Edison, NJ. (Hearing site: Newark, NJ, or New York, NY.)

MC 146285 (Sub-2F), filed November 6, 1979. Applicant: JIM CONNER, d.b.a., JIM CONNER ENTERPRISES, INC., Route 37 South, Benton, IL. Representative: Robert T. Lawley, 300 Reisch Building, Springfield, IL 62701. *Contract carrier,* transporting (1) *mobile work platforms,* from Los Angeles, CA, to Tucson, AZ, Hartford, CT, Boise, ID, Chicago, IL, Shreveport and Baton Rouge, LA, Detroit and Grand Rapids, MI, St. Paul, MN, Kansas City, MO, Reno, NV, Newark, NJ, Syracuse, NY, Cleveland, OH, Oklahoma City, OK, Portland, OR, Pittsburgh, PA, Houston, TX, Salt Lake City, UT, and Seattle, WA, (2) *steel sheets and coils,* from points in IL, MI, NY, and PA, to Pico Rivera, CA, (3) *scrap metals,* between Los Angeles, CA, on the one hand, and, on the other, Chicago, IL, Kokomo, IN, Baltimore, MD, Detroit, MI, Buffalo and Utica, NY, Monroe, NC, Columbus, OH, Oklahoma City, OK, Philadelphia, Pittsburgh, Scottdale, and Titusville, PA, and Huntington, WV, (4) *lumber,* from points in AR, LA, and MS, to Sesser, IL, (5) *steel sheets and coils,* from Detroit, MI, St. Louis, MO, Jersey City, NJ, and Warren, OH, to Signal Hill, CA, and (6) *platform scissor lifts,* from Paramount, CA, to points in the United States (except AK, and HI), under continuing contract(s) with (a) Keedon Enterprises, Inc., of Los Angeles, CA, (b) Westamerica/Lenox Metal Corporation, of Pico Rivera, CA, (c) United Alloys, Inc., of Los Angeles, CA, (d) Allen Lumber Co., of Sesser, IL, (e) F&S Metal, Inc., of Signal Hill, CA, and (f) Systems Manufacturing Co., of Santa Fe Springs, CA. (Hearing site: St. Louis, MO, or Chicago, IL.)

MC 148625F, filed November 6, 1979. Applicant: UNITED AMERICAN CORPORATION, P.O. Box 02370, Cleveland, OH 44102. Representative: Ronald I. Shapss, 450 Seventh Avenue, New York, NY 10001. *Contract carrier* transporting *scrap lead, non-ferrous metals,* and *containers,* between points in OH, on the one hand, and, on the other, points in AZ, CA, CO, CT, FL, GA, KS, MA, MD, NC, NJ, NY, OK, PA, RI, SC, TN, TX, VA, and WI, under continuing contract(s) with the Boggs Equipment Company, of Newbury, OH. (Hearing site: Cleveland, OH.)

MC 148665F, filed November 14, 1979. Applicant: CFS CONTINENTAL TRANSPORTATION CO., a corporation, 2550 North Clybourn Avenue, Chicago, IL 60614. Representative: Leonard R. Kofkin, 39 South La Salle Street, Chicago, IL 60603. *Contract carrier,* transporting *such commodities* as are dealt in or used by grocers, restaurants, and institutional food manufacturers and distributors (except commodities in bulk), between points in the United States (except AK, and HI), under continuing contract(s) with CFS Continental, Inc., and its subsidiaries Continental Coffee Co., of Houston, CFS Continental Dallas, Continental Dayton, Inc., Continental Decatur, Inc., Continental Indianapolis, Inc., Continental Iowa, Inc., Continental Michigan, Inc., and Continental Minnesota, Inc., all of Chicago, IL. (Hearing site: Chicago, IL.)

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Decided: Feb. 21, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce and Jones.

MC 2202 (Sub-622F), filed November 9, 1979. Applicant: ROADWAY EXPRESS, INC., P.O. Box 471, 1077 Gorge Boulevard, Akron, OH 44309. Representative: William O. Turney, suite 1010, 7101 Wisconsin Avenue, Washington, D.C. 20014. Transporting, over irregular routes, *Petroleum and petroleum products,* in bulk, from Aspen, CO to Henderson, NV. (Hearing site: Las Vegas, NV.)

MC 2962 (Sub-70F), filed November 14, 1979. Applicant: A & H TRUCK LINE, INC., 1111 East Louisiana Street, Evansville, IN 47717. Representative: Robert H. Kinker, P.O. Box 464, Frankfort, KY 40602. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over *regular routes,* transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment: between Cincinnati, OH and Terre Haute, IN: from Cincinnati over Interstate Hwy 74 to junction Interstate Hwy 465, then over Interstate Hwy 465 to junction Interstate Hwy 70, and then over Interstate Hwy 70 to Terre Haute, and return over the same route. Service to the junction of Interstate Hwy 465 and IN Hwy 37 for the purpose of joinder only as an alternate route for operating convenience only, in connection with carrier's existing regular-route operations, serving no intermediate points. Applicant proposes to tack authority sought with existing authority in MC 2962. (Hearing site: Louisville, KY or Indianapolis, IN.)

MC 4963 (Sub-87F), filed November 19, 1979. Applicant: JONES MOTOR CO., INC., Bridge Street and Schuylkill Road, Spring City, PA 19475. Representative: Roland Rice, suite 501, Perpetual Building, 1111 E Street, NW., Washington, D.C. 20004. Transporting *empty gas cylinders and electric hot water heaters,* between Crossville, TN on the one hand, and, on the other, points in WI, NY, NJ, GA, IN, MD, IL, OH, and VA, restricted to the transportation of traffic originating at or destined to the facilities of Energy Products Div., Philips Industries, Inc., at Crossville, TN. (Hearing site: Knoxville, TN or Washington, DC.)

MC 4963 (Sub-88F), filed November 19, 1979. Applicant: JONES MOTOR CO., INC., Bridge Street and Schuylkill Road, Spring City, PA 19475. Representative: Roland Rice, suite 501, Perpetual Building, 1111 E Street, NW., Washington, D.C. 20004. Transporting *general commodities* (except those of unusual value, classes A and B explosives, commodities in bulk, household goods as defined by the Commission, and those requiring special equipment), between the facilities of A G Steel, Inc., at Darlington, SC, and points in NC, GA, AL, TN, KY, WV, MO, WI, MI, IN, MD, PA, NJ, OH, DE, VT, MA, CT, ME, VA, IL, NY, and RI. (Hearing site: Washington, DC.)

MC 4963 (Sub-91F), filed November 13, 1979. Applicant: JONES MOTOR CO., INC., Bridge Street and Schuylkill Road, Spring City, PA 19475. Representative: Roland Rice, suite 501, Perpetual Building, 1111 E Street, NW., Washington, D.C. 20004. Transporting *general commodities* (except those of unusual value, classes A and B explosives, commodities in bulk, household goods as defined by the Commission, and those requiring special

equipment), between the facilities of Sumter Wood Preserving Company, Sumter, SC on the one hand, and, on the other, and points in NC, GA, AL, TN, KY, WV, MO, WI, MI, IN, MD, PA, NJ, OH, NY, and DE. (Hearing site: Washington, DC.)

MC 4963 (Sub-92F), filed November 13, 1979. Applicant: JONES MOTOR CO., INC., Bridge Street and Schuylkill Road, Spring City, PA 19475. Representative: Roland Rice, suite 501, Perpetual Building, 1111 E Street NW., Washington, DC 20004. Transporting *general commodities* (except those of unusual value, classes A and B explosives, commodities in bulk, household goods as defined by the Commission, and those requiring special equipment), between Youngstown, OH, on the one hand, and, on the other, MI, IN, and PA, restricted to shipments moving to or from the facilities of The Youngstown Welding & Engineering Company, at Youngstown, OH. (Hearing site: Youngstown, OH.)

MC 4963 (Sub-93F), filed November 14, 1979. Applicant: JONES MOTOR CO., INC., Bridge Street and Schuylkill Road, Spring City, PA 19475. Representative: Roland Rice, suite 501, Perpetual Building, 1111 E Street NW., Washington, DC 20004. Transporting *glass containers and fibreboard boxes,* between Charlotte, MI, on the one hand, and, on the other, points in PA, NY, MD, NJ, VA, DE, and OH. (Hearing site: Washington, DC.)

MC 8973 (Sub-68), filed November 13, 1979. Applicant: METROPOLITAN TRUCKING, INC., 2424 95th Street, North Bergen, NJ 07047. Representative: Morton E. Kiel, suite 1832, 2 World Trade Center, New York, NY 10048. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in the United States (except AK and HI), restricted to the transportation of traffic originating at or destined to the facilities of Reichhold Chemicals, Inc. (Hearing site: New York, NY.)

MC 14552 (Sub-71F), filed November 23, 1979. Applicant: McNICHOLAS TRANSPORTATION CO., 555 West Federal Street, Youngstown, OH 44501. Representative: Paul F. Beery, 275 East State Street, Columbus, OH 43215. Transporting *iron and steel articles,* from the facilities of Bethlehem Steel Corporation at or near Burns Harbor, IN, to points in IA. (Hearing site: Columbus, OH.)

MC 29642 (Sub-14F), filed November 20, 1979. Applicant: FIVE TRANSPORTATION CO., a corporation, 5055 Community Road, P.O. Box 1635, Brunswick, GA 31520. Representative: James M. Fiveash (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), over *regular routes* (1) between Abbeville, GA, and McRae, GA, over US Hwy 280, serving all intermediate points; (2) between Stockton, GA, and Waycross, GA, over US Hwy 84, serving all intermediate points; (3) between Lakeland, GA, and Ocilla, GA, from Lakeland over GA Hwy 135 to Willacoochee, GA, then over GA Hwy 90 to Ocilla, and return over the same route, serving all intermediate points; (4) between Alaphah, GA, and Waycross, GA, over US Hwy 82, serving all intermediate points; (5) between Ocilla, GA, and junction of GA Hwy 99 and US Hwy 17, from Ocilla over GA Hwy 32 to the junction of GA Hwy 99, then over GA Hwy 99 to the junction of GA Hwy 99 and US Hwy 17, and return over the same route, serving all intermediate points; (6) between Hazelhurst, GA, and Douglas, GA, over US Hwy 221, serving all intermediate points; (7) between Hawkinsville, GA, and Jacksonville, FL, from Hawkinsville over US Hwy 129 to Live Oak, FL, then over US Hwy 90 to Jacksonville, and return over the same route, serving all intermediate points; (8) between McRae, GA, and Lake City, FL, over US Hwy 441, serving all intermediate points; and (9) between Edith, GA, and Glen St. Mary, FL, from Edith over GA Hwy 94 to GA–FL State line and then over FL Hwy 2 to Glen St. Mary, and return over the same route, serving all intermediate points. (Hearing site: Jacksonville, FL.)

MC 36473 (Sub-78F), filed November 16, 1979. Applicant: CENTRAL TRUCK LINES, INC., P.O. Box 18464, Tampa, FL 33679. Representative: Roland Rice, 501 Perpetual Building, 1111 E Street, NW., Washington, DC 20004. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over regular routes, transporting *general commodities,* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Atlanta, GA, and Mobile, AL: from Atlanta over Interstate Hwy 85, to Montgomery, AL, then over Interstate Hwy 65, to Mobile, AL, and return over the same route, serving no intermediate points, as an alternate route for operating convenience only serving no intermediate points. (Hearing site: Tampa, FL.)

MC 47583 (Sub-114F), filed November 23, 1979. Applicant: TOLLIE FREIGHTWAYS, INC., 1020 Sunshine Road, Kansas City, KS 66115. Representative: D. S. Hults, P.O. Box 225, Lawrence, KS 66044. Transporting *mortar and grout* (except in bulk), from the port of entry on the international boundary line between the United States and Mexico at Calexico, CA, to points in AZ, CA, CO, NV, NM, OR, TX, UT, and WA. (Hearing site: Kansas City, MO.)

MC 59332 (Sub-No. 7F), filed November 13, 1979. Applicant: TAYLOR'S EXPRESS, INC., 425 North 37th Street, Pennsauken, NJ 08810. Representative: Michael R. Werner, 167 Fairfield Road, P.O. Box 1409, Fairfield, NJ 07006. Transporting *metal bearings* and *metal ball bearing rollers, from* Baltimore, MD to Stamford, CT. (Hearing site: New York, NY.)

MC 59332 (Sub-No. 8F), filed November 16, 1979. Applicant: TAYLOR'S EXPRESS, INC., 425 North 37th Street, Pennsauken, NJ 08810. Representative: Michael R. Werner, 167 Fairfield Road, P.O. Box 1409, Fairfield, NJ 07006. Transporting (1) *bulldozers, dump trucks, and forklifts,* and (2) *materials, equipment, and supplies,* for the commodities in (1) above, from Philadelphia, PA, to the facilties of Komatsu America Corporation, at points in IL. (Hearing site: Philadelphia, PA.)

MC 59332 (Sub-No. 9F), filed November 16, 1979. Applicant: TAYLOR'S EXPRESS, INC., 425 North 37th Street, Pennsauken, NJ 08810. Representative: Michael R. Werner, 167 Fairfield Road, P.O. Box 1409, Fairfield, NJ 07006. Transporting *asphalt,* between the facilities of Plymouth Asphalt, at Pennsauken, NJ, on the one hand, and, on the other, New York, NY and points in DE, MD, and PA. (Hearing site: Philadelphia, PA.)

MC 61592 (Sub-478F), filed November 19, 1979. Applicant: JENKINS TRUCK LINE, INC., P.O. Box 697, Jeffersonville, IN 47130. Representative: E. A. DeVine, P.O. Box 737, Moline, IL 61265. Transporting *lumber, wood products, millwork, and molding,* (except commodities in bulk), from points in CA, to points in AR, LA, OK, and TX. The purpose of this application is to substitute single-line for joint-line operations. (Hearing site: Los Angeles, CA.)

MC 76993 (Sub-30F), filed November 20, 1979. Applicant: EXPRESS FREIGHT LINES, INC., 4924 South 13th Street, Milwaukee, WI 53221. Representative:

Wayne W. Wilson, 150 East Gilman Street, Madison, WI 53703. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between Milwaukee, WI and Two Rivers, WI, from Milwaukee over I–43 to junction US Hwy 141, then over US Hwy 141 to junction WI Hwy 42, then over Hwy 42 to Two Rivers and return over the same route; (2) between Sheboygan, WI and Manitowoc, WI over WI Hwy 42; (3) between Milwaukee, WI and Howards Grove, WI over WI Hwy 32; (4) between Milwaukee, WI and Chilton, WI over WI Hwy 57; (5) between junction WI Hwy 57 and WI Hwy 144 and junction WI Hwy 144 and I–43 over WI Hwy 144; (6) between Howards Grove, WI and junction WI Hwy 57 and WI Hwy 32 over WI Hwy 32; (7) between Plymouth, WI and Sheboygan, WI over WI Hwy 23; serving all intermediate points on routes (1) through (7) and the off-route points of Fredonia, Belgium, Oostburg, Kohler, and Haven, WI. (Hearing site: Milwaukee, WI.)

Note.—Applicant proposes to combine service over routes (1) through (7) with all existing authorized service routes.

MC 87103 (Sub-42FF), filed November 20, 1979. Applicant: MILLER TRANSFER AND RIGGINS CO. a corporation, P.O. Box 322, Cuyahoga Falls, OH 44222. Representative: Edward P. Bocko, (same address as applicant). Transporting *Conveyors, Feeders, Vibrators, Shakers* and *material handling equipment* from the facilities of General Kinematics Corporation at Woodstock, Love Park, Rockford, Elk Grove Village and Crystal Lake, IL to points in the United States in and east of MT, WY, UT and AZ. Restricted to shipments originating at the named facilities. (Hearing site: Chicago, IL or Washington, DC.)

MC 92692 (Sub-7F), filed November 16, 1979. Applicant: FREEPORT FAST FREIGHT, INC., 4109 West 52nd Place, Chicago, IL 60652. Representative: Carl L. Steiner, 39 South LaSalle Street, Chicago, IL 60603. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over *regular routes,* transporting *general commodities* (except commodities in bulk, household goods as defined by the Commission, and commodities requiring special equipment), (1)(a) between the IL–WI state line and Milwaukee, WI over I–94, serving all intermediate points, (b) between the IL–WI state line over WI 32, serving all intermediate points, and Milwaukee, WI, and (c) between the IL–WI state line and Milwaukee, WI, over WI 15, serving all intermediate points; (2) between the IL–WI state line and Racine, WI, from the IL–WI state line over WI 15 to junction WI 11, then over WI 11 to Racine, WI, and return over the same route, serving all intermediate points; and (3) between the IL–WI state line and Kenosha, WI, from the IL–WI state line over WI 15 to junction WI 50, then over WI 50 to Kenosha, WI, and return over the same route, serving all intermediate points. (Hearing site: Chicago, IL.)

MC 96273 (Sub-2F), filed November 3, 1979. Applicant: CURTIS A. DORSEY d.b.a. DORSEY'S BUS SERVICE, Box 13, Still Pond, MD 21667. Representative: Steven L. Weiman, suite 145, 4 Professional Drive, Gaithersburg, MD 20760. Transporting *passengers and their baggage* in round-trip special and charter operations, beginning and ending at points in Kent, Queen Annes and Cecil Counties, MD and extending to points in the United States (including AK but excluding HI). (Hearing site: Washington, DC.

MC 96793 (Sub-4F), filed November 23, 1979. Applicant: MARIPOSA EXPRESS, INC., 131 Alpine Drive, Merced, CA 95340. Representative: Raymond A. Greene, Jr., 100 Pine Street, suite 2550, San Francisco, CA 94111. Transporting *general commodities* (except articles of unusual value, Classes A & B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment) between points in Fresno, Madera, Merced, Stanislaus and San Joaquin Counties, CA. (Hearing site: San Francisco, CA.)

MC 98952 (Sub-78F), filed November 20, 1979. Applicant: GENERAL TRANSFER CO., a corporation, 2880 North Woodford Street, Decatur, IL 62526. Representative: Charles Carnahan, Jr. (same address as applicant). Transporting *foodstuffs,* in mechanically refrigerated equipment, except in bulk, from the facilities of Louisville Freezer Center in Louisville, KY, to points in IL, IN, OH, MI, WI, IA, and MO, restricted to the transportation of traffic originating at the named origin and destined to the indicated destinations. (Hearing site: Louisville, KY, or Chicago, IL.)

MC 103993 (Sub-1008F), filed November 14, 1979. Applicant: MORGAN DRIVE–AWAY, INC., 28651 U.S. 20 West, Elkhart, IN 46515. Representative: James B. Buda (same address as applicant). Transporting (1) *aluminum ingots and zinc alloy ingots,* from the facilities of (a) Aluminum Smelting and Refining Company, Inc., and (b) Certified Alloys Company, at or near Maple Heights, OH, to those points in the United States in and east of ND, SD, NE, KS, OK, and TX; and (2) *aluminum, zinc and materials, equipment, and supplies,* used in the manufacture of aluminum and zinc in the reverse direction. (Hearing site: Cleveland, OH.)

MC 103993 (Sub-1009F), filed November 26, 1979. Applicant: MORGAN DRIVE–AWAY, INC., 28651 U.S. 20 West, Elkhart, IN 46515. Representative: James B. Buda (same address as applicant). Transporting (1) *farm implements,* and (2) *materials and supplies* used in the manufacture of farm implements, between the facilities of Forrest City Machine Works, at or near Forrest City, AR, on the one hand, and, on the other, points in AL, LA, IN, IL, OH, MI, and WI. (Hearing site: Little Rock, AR.)

MC 103993 (Sub-1010F), filed November 23, 1979. Applicant: MORGAN DRIVE–AWAY, INC., 28651 U.S. 20 West, Elkhart, IN 46515. Representative: James B. Buda (same address as applicant). Transporting *trailers,* (except those designed to be drawn by passenger automobiles), from the facilities of Aztec Products, Inc., at or near Mansfield, TX, to points in the United States, (except AK and HI). (Hearing site: Fort Worth, TX.)

MC 103993 (Sub-1011F), filed November 23, 1979. Applicant: MORGAN DRIVE-AWAY, INC., 28651 U.S. 20 West, Elkhart, IN 46515. Representative: James B. Buda (same address as applicant). Transporting *trailers* (except those designed to be drawn by passenger automobiles), in initial movements, from the facilities of Cherokee Products, Inc., at or near Arlington, TX, to points in the United States, (except AK and HI). (Hearing site: Dallas, TX.)

MC 103993 (Sub-1017F), filed November 13, 1979. Applicant: MORGAN DRIVE-AWAY, INC., 28651 U.S. 20 West, Elkhart, IN 46515. Representative: James B. Buda (same address as applicant). Transporting *trailers* (except those designed to be drawn by passenger automobiles), in initial movements, from the facilities of Fruehauf Corporation at or near Ft. Worth, TX, to points in the United States, (except AK and HI). (Hearing site: Fort Worth, TX.)

MC 105733 (Sub-76F), filed November 28, 1979. Applicant: RITTER TRANSPORTATION, INC., 928 East Hazelwood Avenue, Rahway, NJ 07065. Representative: Chester A. Zyblut, 366 Executive Building, 1030 15th St. NW., Washington, DC 20005. Transporting *chemicals in bulk, in tank vehicles,* from

points in the United States to the plant site of J. T. Baker Chemical Company at Phillipsburg, NJ. (Hearing site: Washington, DC.)

MC 105733 (Sub-77F), filed November 28, 1979. Applicant: RITTER TRANSPORTATION, INC., 928 East Hazelwood Avenue, Rahway, NJ 07065. Representative: Chester A. Zyblut, 366 Executive Building, 1030 15th St. NW., Washington, DC 20005. Transporting *petroleum and petroleum products, in bulk, in tank vehicles,* from Delaware City, DE, to CT, MA, ME, NJ, NH, NY, OH, PA, RI, and VT. (Hearing site: Washington, DC.)

MC 107002 (Sub-562F), filed November 5, 1979. Applicant: MILLER TRANSPORTERS, INC., P.O. Box 1123, Jackson, MS 39205. Representative: John J. Borth, P.O. Box 8573, Battlefield Station, Jackson, MS 39204. Transporting *cement,* from Memphis, TN, to points in AL, AR, KY, IL, LA, MS, TN, and MO. (Hearing site: Memphis, TN.)

MC 107002 (Sub-566F), filed November 29, 1979. Applicant: MILLER TRANSPORTERS, INC., P.O. Box 1123, Jackson, MS 39205. Representative: John J. Borth, P.O. Box 8573, Battlefield Station, Jackson, MS 39204. Transporting *chemicals,* in bulk, from Mobile, AL to points in NM, OK and TX. (Hearing site: Jackson, MS.)

MC 107012 (Sub-465F), filed November 16, 1979. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same address as applicant). Transporting *plastic hose,* from the facilities of Totaku America Corp. at or near Compton, CA, to points in the United States (except AK and HI). (Hearing site: Los Angeles, CA, or Washington, DC.)

MC 107162 (Sub-62F), filed November 13, 1979. Applicant: NOBLE GRAHAM TRANSPORT, INC., Rural Route No. 1 Brimley, MI 49715. Representative: John Duncan Varda, 121 South Pinckney Street, Madison, WI 53703. Transporting (1) *lumber,* from the ports of entry on the international boundary line between the United States and Canada at or near Detroit, MI, to points in IN, MI, and OH; (2) *fabricated metal products,* from Kincheloe, Lansing, and Grand Ledge, MI, to points in IL, IN, IA, MN, OH, and WI, and, on return (3) *equipment, materials, and supplies* (except in bulk), used in the manufacture and distribution of the commodities in (2) above, from points in IL, IN, IA, MN, OH, and WI, to Kincheloe, MI; and (4) *fertilizer and chemicals* used in the manufacture of fertilizer (except in bulk), from Hazel Green, WI, to the Upper Peninsula of MI. (Hearing site: Grand Rapids, MI or Chicago, IL.)

Note.—Dual operations may be involved.

MC 107323 (Sub-60F), filed November 13, 1979. Applicant: GILLILAND TRANSFER CO., a corporation, 7180 West 48th Street., Fremont, MI 49412. Representative: Donald B. Levine, 39 South LaSalle Street, Chicago, IL 60604. Transporting *such commodities* as are dealt in by food business houses, and *materials, equipment, and supplies* used in the conduct of such business, (except frozen foods, fresh meats, and commodities in bulk), from points in WI, IL, IN, and OH, to points in IN and those in the Lower Peninsula of MI. (Hearing site: Chicago, IL.)

MC 107323 (Sub-61F), filed November 29, 1979. Applicant: GILLILAND TRANSFER CO., a corporation, 7180 West 48th Street, Fremont, MI 49412. Representative: Donald B. Levine, 39 South LaSalle Street, Chicago, IL 60603. Transporting *such commodities* as are dealt in by manufacturers of baby foods, baby food products, and baby supplies (except in bulk), from the facilities of Gerber Products Company at or near Fremont, MI, to Davenport, IA and points in that part of WI on, east, and south of a line beginning at Kewaunee, WI, then along WI Hwy 29 to the junction of US Hwy 45, then south along US Hwy 45 to junction US Hwy 41, then south along US Hwy 41 to the WI–IL state line. (Hearing site: Chicago, IL.)

MC 107323 (Sub-62F), filed November 29, 1979. Applicant: GILLILAND TRANSFER CO., a corporation, 7180 West 48th St., Fremont, MI 49412. Representative: Donald B. Levine, 39 South LaSalle St., Chicago, IL 60603. Transporting *such commodities* as are dealt in by manufacturers of baby foods, baby food products, and baby supplies (except commodities in bulk), between Chicago, IL, on the one hand, and, on the other, the facilities of Gerber Products Company at or near (1) Three Oaks, MI and (2) Indianapolis, IN, restricted to the transportation of traffic originating at or destined to the named Gerber Products Company facilities. (Hearing site: Chicago, IL.)

MC 107323 (Sub-63F), filed November 30, 1979. Applicant: GILLILAND TRANSFER CO., a corporation, 7180 West 48th St., Fremont, MI 49412. Representative: Donald B. Levine, 39 South LaSalle St., Chicago, IL 60603. Transporting *such commodities* as are dealt in by manufacturers of baby foods, baby food products, and baby supplies (except commodities in bulk), between the facilities of Gerber Products Company at or near Fremont, MI, on the one hand, and, on the other, the facilities of Gerber Products Company at or near (1) Asheville, Arden and Skyland, NC and (2) Ft. Smith, AR. (Hearing site: Chicago, IL.)

MC 107403 (Sub-1283F), filed November 14, 1979. Applicant: MATLACK, INC., Ten West Baltimore Ave., Lansdowne, PA 19050. Representative: Martin C. Hynes, Jr., (address same as applicant). Transporting *cement,* from Oswego, NY, to points in Erie, Warren, McKean, Tioga, Potter, Bradford, Susquehanna, and Wayne Counties, PA. (Hearing site: Washington, DC.)

MC 107403 (Sub-1285F), filed November 13, 1979. Applicant: MATLACK, INC., Ten West Baltimore Ave., Lansdowne, PA 19050. Representative: Martin C. Hynes, Jr., (address same as applicant). Transporting *commodities,* in bulk, in tank vehicles, between points in the United States (except AK and HI), restricted to the transportation of traffic, originating at or destined to the facilities of Robintech, Inc. (Hearing site: Washington, DC.)

MC 107403 (Sub-1301F), filed November 23, 1979. Applicant: MATLACK, INC., Ten West Baltimore Ave., Lansdowne, PA 19050. Representative: Martin C. Hynes, Jr. (same address as applicant). Transporting *muriatic acid,* in bulk, in tank vehicles, from Fort Worth, TX, to points in LA and OK. (Hearing site: Washington, DC.)

MC 107403 (Sub-1302F), filed November 27, 1979. Applicant: MATLACK, INC., Ten West Baltimore Ave., Lansdowne, PA 19050. Representative: Martin C. Hynes, Jr. (same address as applicant). Transporting *fly ash,* in bulk, in tank vehicles, from (1) Trenton, NJ, Holtwood, PA, and points in Montour County, PA, to points in NJ, MD, VA, DE, NY, MA, RI, CT, WV, and PA, and (2) from points in Montour County, PA, to points in OH. (Hearing site: Washington, DC.)

MC 107403 (Sub-1304F), filed November 30, 1979. Applicant: MATLACK, INC., Ten West Baltimore Ave., Lansdowne, PA 19050. Representative: Martin C. Hynes, Jr. (same address as applicant). Transporting *petroleum products,* in bulk, in tank vehicles, from Owensboro, KY, Memphis, and Nashville, TN, Oakland City, Evansville and Mt. Vernon, IN, Wood River, IL and W. Memphis, AR, to points in AR, IN, IL, KY, MO, and TN. (Hearing site: Washington, DC.)

MC 112123 (Sub-19F), filed November 13, 1979. Applicant: BEST-WAY TRANSPORTATION, a corporation, 5150 North 16th Street, Phoenix, AZ 85016. Representative: Donald E. Fernaays, 4040 East McDowell Road, Phoenix, AZ 85008. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment), (1) between Phoenix and Williams, AZ, serving all intermediate points, from Phoenix over I-Hwy 17 to Flagstaff, AZ, then over I-Hwy 40 to Williams, and return over the same route; (2) between Cordes Junction and Flagstaff, AZ, serving all intermediate points, from Cordes Junction over AZ Hwy 69 to Prescott, AZ, then over U.S. Hwy 89 to junction of U.S. Hwy 89A, then over U.S. Hwy 89A to Flagstaff, and return over the same route; (3) between the junction of I-Hwy 17 and State Route 279 and Cottonwood, AZ, serving all intermediate points, over State Route 279; (4) between the junction of I-Hwy 17 and State Route 179 and Sedona, AZ, serving all intermediate points, over State Route 179. (Hearing site: Los Angeles, CA, or Flagstaff, AZ.)

Note.—Application intends to tack to its existing authority and any authority it may acquire in the future.

MC 112713 (Sub-291F), filed November 16, 1979. Applicant: YELLOW FREIGHT SYSTEM, INC., P.O. Box 7270, Overland Park, KS 66207. Representative: John M. Records (address same as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Chicago, IL, St. Louis, and Kansas City, MO, Memphis, TN, and Denver, CO, on the one hand, and, on the other, points in CA, OR, WA, UT, NV, and ID, restricted to transportation of the traffic moving on bills of lading of freight forwarders as defined in 49 U.S.C. 10102(8). (Hearing site: Kansas City, MO, or Washington, DC.)

MC 112713 (Sub-293F), filed November 30, 1979. Applicant: YELLOW FREIGHT SYSTEM, INC., P.O. Box 7270, Shawnee Mission, KS 66207. Representative: Robert E. DeLand (same address as applicant). Transporting *general commodities*, (except classes A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities of unusual value and those requiring special equipment) (1) between Ft. Smith, AR and Memphis, TN, from Ft. Smith, over U.S. Hwy 64 to junction U.S. Hwy 65, then over U.S. Hwy 65 to Little Rock AR, then over U.S. Hwy 70 to Memphis, and return over the same route, serving all intermediate points and the off-route points of Pine Bluff, Jacksonville, Hot Springs, Malvern, Benton, Searcy, Stuttgart, Bauxite and Ashdown, AR, (2) between Dallas, TX, and Little Rock, AR, over U.S. Hwy 67 serving the intermediate point of Texarkana, TX and the off-route points of the Red River Army Depot and Lone Star Ammunition Depot, at or near Texarkana, TX, (3) between Little Rock, AR, and Springfield, MO over U.S. Hwy 65 as an alternate route for operating convenience only serving no intermediate points, (4) between Oklahoma City, OK and Ft. Smith, AR over Interstate Hwy 40 as an alternate route for operating convenience only, serving no intermediate points, but serving the junction of Interstate Hwy 40 and U.S. Hwy 69 as a point of joinder only. Common control may be involved. (Hearing site: Little Rock, AR, or Memphis, TN.)

Note.—Applicant intends to tack.

MC 113362 (Sub-376F), filed November 13, 1979. Applicant: ELLSWORTH FREIGHT LINES, INC., 310 East Broadway, Eagle Grove, IA 50533. Representative: Milton D. Adams, P.O. Box 429, Austin, MN 55912. Transporting *materials, equipment, ingredients, and supplies* used in the manufacture and distribution of veterinary supplies, animal drugs, and medicines, feeds, and supplemental powders (except in bulk), from points in MA, NY, NJ, MD, PA, VA, WV, and Charleston, SC, to Charles City, IA. (Hearing site: Des Moines, IA, or Washington, DC.)

MC 113362 (Sub-377F), filed November 13, 1979. Applicant: ELLSWORTH FREIGHT LINES, INC., 310 East Broadway, Eagle Grove, IA 50533. Representative: Milton D. Adams, P.O. Box 429, Austin, MN 55912, Transporting *paper and pulpboard cores and tubes* and *materials and supplies* used in the manufacture of paper cores and tubes (except in bulk), between Boone, IA, on the one hand, and, on the other, points in IL, KS, MN, MO, NE, ND, SD, and WI, restricted to shipments originating at or destined to the facilities of Sonoco Products Co., located at or near Boone, IA. (Hearing site: Des Moines, IA, or Washington, DC.)

MC 113362 (Sub-377F), filed November 13, 1979. Applicant: ELLSWORTH FREIGHT LINES, INC., 310 East Broadway, Eagle Grove, IA 50533. Representative: Milton D. Adams, P.O. Box 429, Austin, MN 55912, Transporting *paper and pulpboard cores and tubes and materials and supplies* are used in the manufacture of paper cores and tubes (except in bulk), between Boone, IA, on the one hand, and, on the other, points in IL, KS, MN, MO, NE, ND, SD, and WI, restricted to shipments originating at or destined to the facilities of Sonoco Products Co., located at or near Boone, IA. (Hearing site: Des Moines, IA, or Washington, DC.)

MC 113843 (Sub-275F), filed November 16, 1979. Applicant: REFRIGERATED FOOD EXPRESS, INC., 316 Summer St., Boston, MA 02210. Representative: Lawrence T. Sheils, (address same as applicant). Transporting *foodstuffs*, (except commodities in bulk), from points in MD, to points in FL, MI, MA, NY, PA, and OH. (Hearing site: Boston, MA.)

MC 114273 (Sub-680F), filed November 30, 1979. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). Transporting *chemicals and cleaning compounds* from Macedonia, OH to points in TX and VA. (Hearing site: Chicago, IL, or Washington, DC.)

Note.—Common control may be involved.

MC 114273 (Sub-681F), filed November 30, 1979. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). Transporting *commodities* (except in bulk) as are dealt in by wholesale, retail and chain grocery and food business houses, and equipment, materials, and supplies used in the conduct of such business, between points in the United States in and east of KS, NE, ND, OK, SD, and TX (except ME, FL, MS, AL and AR), restricted to traffic originating at or destined to the facilities of the Drackett Company. (Hearing site: Chicago, IL, or Washington, DC.)

Note.—Common control may be involved.

MC 114273 (Sub-682F), filed November 30, 1979. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). Transporting *glass containers and materials* used in the manufacturing thereof, from Mt. Vernon, OH to points in IL, IA, MN, MO and WI. (Hearing site: Chicago, IL, or Washington, DC.)

Note.—Common control may be involved.

MC 114273 (Sub-684F), filed November 30, 1979. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). Transporting *wallboard* and *insulating material* and *materials* used in the installation thereof (except commodities in bulk), from the facilities of Armstrong Cork Company at

or near (1) Beaver Falls, PA, to points in IL, IN and MI; and (2) Marietta, PA to points in IN and MI. (Hearing site: Chicago, IL, or Washington, DC.)

Note.—Common control may be involved.

MC 114552 (Sub-240F), filed November 15, 1979. Applicant: SENN TRUCKING CO., a corporation, P.O. Drawer 220, Newberry, SC 29108. Representative: Virgil H. Smith, Suite 12, 1587 Phoenix Blvd., Atlanta, GA 30349. Transporting *building materials* and *materials, equipment, and supplies* used in the manufacture, installation, and distribution of building materials (except commodities in bulk), between Fredrick, MD, on the one hand, and, on the other, those points in the United States in and east of ND, SD, NE, KS, OK, and TX. (Hearing site: Columbus, SC, or Atlanta, GA.)

MC 114632 (Sub-267F), filed November 13, 1979. Applicant: APPLE LINES, INC., P.O. Box 287, Madison, SD 57042. Representative: David E. Peterson (same address as applicant). Transporting *such commodities* as are dealt in by wholesale, retail and chain grocery and food business houses (except frozen commodities and commodities in bulk), from the facilities of The Clorox Company at Kansas City, MO to points in CO, NE, and SD. (Hearing site: Kansas City, MO, or Oakland, CA.)

MC 114632 (Sub-268F), filed November 13, 1979. Applicant: APPLE LINES, INC., P.O. Box 287, Madison, SD 57042. Representative: David E. Peterson (same address as applicant). Transporting (a) *agricultural machinery, implements, parts and equipment,* (b) *industrial and construction machinery, parts and equipment,* and (c) *materials and supplies* used in the manufacture, sale, and distribution of the commodities in (a) and (b) above, between Yankton, SD, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Sioux Falls, SD or Minneapolis, MN.)

MC 114632 (Sub-269F), filed November 13, 1979. Applicant: APPLE LINES, INC., P.O. Box 287, Madison, SD 57042. Representative: David E. Peterson (same address as applicant). Transporting *iron and steel articles,* from the facilities of Great Lakes Steel at Detroit, MI, to points in IA, MN, SD, and WI. (Hearing site: Detroit, MI, or Chicago, IL.)

MC 114632 (Sub-270F), filed November 13, 1979. Applicant: APPLE LINES, INC., P.O. Box 287, Madison, SD 57042. Representative: David E. Peterson (same address as applicant). Transporting *foodstuffs,* between the facilities of Delaware Freezer Center located at Newark, DE, on the one hand, and, on the other points in and east of ND, SD, NE, CO and NM. (Hearing site: Louisville, KY, or Minneapolis, MN.)

MC 115092 (Sub-98F), filed November 16, 1979. Applicant: TOMAHAWK TRUCKING, INC., P.O. Box 0, Vernal, UT 84078. Representative: Walter Kobos, 1016 Kehoe Drive, St. Charles, IL 60174. Transporting *flat glass,* from the facilities of PPG Industries, Inc., at or near Crystal City, MO, to points in AZ, CA, CO, ID, MT, NV, NM, OR, UT, WA, and WY. (Hearing site: Pittsburgh, PA.)

MC 115162 (Sub-513F), filed November 13, 1979. Applicant: POOLE TRUCK LINE, INC., P.O. Drawer 500, Evergreen, AL 36401. Representative: Robert E. Tate (same address as applicant). Transporting, *poles, piling and posts* from the facilities of the International Paper Company in Escambia County, AL to points in the United States in and east of ND, SD, NE, KS, OK, and TX (except IN, IL, KY, MI, OH, PA, TN and WI). (Hearing site: Mobile, AL, or New Orleans, LA.)

MC 115603 (Sub-20F), filed November 30, 1979. Applicant: TURNER BROS. TRUCKING CO., INC., 1501 S. Hattie, P.O. Box 94626, Oklahoma City, OK 73143. Representative: J. Michael Alexander, First Continental Bank Bldg., Suite 301, 5801 Marvin D. Love Freeway, Dallas, TX 75237. Transporting (1)(a) *machinery, equipment, materials, and supplies* used in the refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and by-products, and (b) *machinery, equipment, materials, and supplies* used in the construction, operation, repair, servicing, maintenance, and dismantling of pipelines, including the stringing and picking up thereof (except in connection with main or trunk pipelines); and (2) *earth drilling machinery and equipment,* and *machinery, equipment, materials and supplies* and *pipe* used in (a) the transportation, installation, removal, operation, repair, servicing, maintenance, and dismantling of drilling machinery and equipment, (b) the completion of holes or wells drilled, (c) the production, storage, and transmission of commodities resulting from drilling operations at well or hole sites, and (d) the injection or removal of commodities into or from holes or wells, between points in WY, LA, IL, CO, AR, OK, TX, and KS, on the one hand, and, on the other, points in UT, MT, OR, ND, ID, WA, NM, and NV. (Hearing site: Oklahoma City, OK, or Dallas, TX.)

Note.—The purpose of this application is to substitute single-line for joint-line operations.

MC 116273 (Sub-250F), filed November 13, 1979. Applicant: D & L TRANSPORT, INC., 3800 S. Laramie Ave., Cicero, IL 60650. Representative: William R. Lavery (same address as applicant). Transporting (1) *chemicals,* in bulk, in tank vehicles, from the facilities of Amoco Chemicals Corporation, at or near Joliet, IL, to points in NC, NY, PA, SC, VA, and VT, (2) *dry chemicals,* in bulk, in tank vehicles, from the facilities of Amoco Chemicals Corporation, at or near Joliet, IL, to points in GA, IN, IA, MI, MN, MO, OH, KY, and WI, (3) *liquid chemicals,* in bulk, in tank vehicles, from the facilities of Amoco Chemicals Corporation, at or near Joiliet, IL, to points in CA, CO, and NJ, and (4) *dry plastics* in bulk, in tank vehicles, from Willow Springs, IL, to points in NE, and SC. (Hearing site: Chicago, IL, or Washington, DC.)

MC 116763 (Sub-632F), filed November 15, 1979. Applicant: CARL SUBLER TRUCKING, INC., North West St., Versailles, OH 45380. Representative: Gary J. Jira (same address as applicant). Transporting (1) *paper and paper articles* (except commodities in bulk, in tank vehicles), and (2) *materials, equipment, and supplies,* used in the manufacture or distribution of commodities in (1) above (except commodities in bulk, in tank vehicles), between the facilities used by Olinkraft, Inc., at or near Kankakee, IL, on the one hand, and, on the other, those points in the United States in and east of MN, IA, MO, OK, and TX, restricted to the transportation of traffic originating at or destined to the named facilities. (Hearing site: New Orleans, LA.)

MC 116763 (Sub-634F), filed November 28, 1979. Applicant: CARL SUBLER TRUCKING, INC., North West St., Versailles, OH 45380. Representative: Gary J. Jira (same address as applicant). Transporting *foodstuffs* (except commodities in bulk, in tank vehicles), from Poughkeepsie, NY, to points in FL, KY, LA, OH, and TX, restricted to the transportation of traffic originating at the named origin and destined to the indicated destinations. (Hearing site: New York City, NY.)

MC 117883 (Sub-264F), filed November 19, 1979. Applicant: SUBLER TRANSFER, INC., One Vista Dr., Versailles, OH 45380. Representative: Neil E. Hannan, P.O. Box 62, Versailles, OH 45380. Transporting (1) *meats, meat products and meat byproducts, and articles distributed by meat packing houses, as described in Sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766 (except foodstuffs, hides, and commodities in bulk), and (2) *foodstuffs* (except commodities in bulk) from

Chicago, IL, to points in IN and KY, restricted in (1) and (2) above to the transportation of traffic originating at the named origin and destined to the indicated destinations. (Hearing site: Chicago, IL.)

MC 118142 (Sub-242F), filed November 13, 1979. Applicant: M. BRUENGER & CO., INC., 6250 North Broadway, Wichita, KS 67219. Representative: Lester C. Arvin, 814 Century Plaza Building, Wichita, KS 67202. Transporting *Soy protein concentrate,* from Muskogee, OK to Sacramento amd Stockton, CA, Wichita, KS, and Savage, MN. (Hearing site: Kansas City, MO or Wichita, KS.)

MC 118142 (Sub-243F), filed November 19, 1979. Applicant: M. BRUENGER & CO., INC., 6250 North Broadway, Wichita, KS 67219. Representative: Brad T. Murphree, 814 Century Plaza Building, Wichita, KS 67202. Transporting *alcoholic beverages,* (except in bulk), from Detroit, MI and Chicago, IL to Kansas City, MO; restricted to the transportation of shipments originating at the named origins and destined to the facilities of McKesson Wine & Spirits Co. at Kansas City, MO. (Hearing site: Kansas City, MO or Wichita, KS.)

MC 118143 (Sub-244F), filed November 19, 1979. Applicant: M. BRUENGER & CO., INC., 6250 North Broadway, Wichita, KS 67219. Representative: Brad T. Murphree, 814 Century Plaza Building, Wichita, KS 67202. Transporting *alcoholic beverages,* (except commodities in bulk in tank vehicles), from Lawrenceburg, IN, Bardstown, Clermont, Frankfort, Lawrenceburg, and Louisville, KY, and Detroit, MI to points in KS. (Hearing site: Wichita, KS or Kansas City, MO.)

MC 119493 (Sub-343F), filed November 27, 1979. Applicant: MONKEM COMPANY, INC., P.O. Box 1196, Joplin, MO 64801. Representative: Thomas D. Boone (same address as applicant). Transporting *charcoal and charcoal products* and *materials and supplies* used in the manufacture and distribution of charcoal products (except commodities in bulk), between points in the United States (except AK and HI, and except between Branson, MO, on the one hand, and, on the other, points in SD, NE, KS, OK, MO, TX, AR, LA, MS, TN, KY, MN, MI, WI, IA, IL, IN, AL, and GA, and except between Pachuta, MS, on the one hand, and, on the other, points in AL, GA, SC, NC, TN, and LA, restricted to the transportation of traffic originating at or destined to the facilities of Husky Industries, Inc. (Hearing site: Atlanta, GA or Little Rock, AR.)

MC 119493 (Sub-334F), filed November 13, 1979. Applicant: MONKEM COMPANY, INC., P.O. Box 1196, Joplin, MO 64801. Representative: Thomas D. Boone (same address as applicant). Transporting (1) *glass and glass products,* and (2) *materials and supplies* used in the manufacture and distribution of the commodities in (1) (except commodities in bulk), between points in the United States in and east of MT, CO, WY, and NM (except AK and HI), and except glass and glass products from the facilities of Fourco Glass Company at Clarksburg and Jerry Run, WV, to points in AL, AR, CO, IA, KS, LA, MO, MN, MS, NE, OK, TN, TX, and WI, and except materials and supplies used in the manufacture and distribution of glass and glass products in the reverse direction), restricted to the transportation of traffic originating at or destined to the facilities of Fourco Glass Company, ASG Industries, and AFG Industries, at points in the United States. (Hearing site: Kingsport or Memphis, TN.)

MC 121123 (Sub-3F), filed November 13, 1979. Applicant: LEONI MOTOR EXPRESS, INC., 501–23 Ashland Ave., Chicago Heights, IL 60411. Representative: Thomas F. McFarland, Jr., 20 North Wacker Drive, Chicago, IL 60606. Transporting *general commodities* (except those of unusual value, classes A and B explosive, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment) between Chicago, IL, on the one hand, and, on the other, points in IL and IN, WI on and south of US Hwy. 18, IA on and east of US Hwy 63, MO on and east of US Hwy. 61, KY on and north of US Hwy. 62, OH on and west of a line beginning at the KY–OH State line and extending along US Hwy. 62 to Columbus, OH, then along US Hwy. 23 to Toledo, OH, and MI on and south of a line beginning at Muskegon, MI, and extending along Interstate Hwy. 96 to Grand Rapids, MI, then along State Hwy. 21 to Port Huron, MI. (Hearing site: Chicago, IL.)

MC 124673 (Sub-49F), filed November 13, 1979. Applicant: FEED TRANSPORTS, INC., P.O. Box 2167, Amarillo, TX 79105. Representative: Thomas F. Sedberry, 801 Vaughn Building, Austin, TX 78701. Transporting (1) *meat and bone meal and dry rendered tankage* from the facilities of Swift and Company near Cactus, TX, to points in MO, OK and KS and (2) *fish meal* from San Diego, CA, to points in AZ, CO, IA and OK. (Hearing site: Dallas, TX.)

MC 125433 (Sub-352F), filed November 13, 1979. Applicant: F–B TRUCK LINE CO., 1945 South Redwood Road, Salt Lake City, UT 84104. Representative: John B. Anderson (same address as applicant) Transporting *such commodities* as are dealt in or used by dealers and manufacturers of agricultural equipment, industrial equipment, and lawn and leisure products (except commodities in bulk, and automobiles, trucks, and buses, as described in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766) from Columbus, NE to AZ, CA, CO, ID, MT, NM, NV, OR, UT, WA and WY, restricted to the transportation of traffic originating at the facilities of the Sperry New Holland Division, Sperry Corporation at or near Columbus, NE. (Hearing: Washington, DC.)

MC 125433 (Sub-361F), filed November 9, 1979. Applicant: F–B TRUCK LINE CO., 1945 South Redwood Road, Salt Lake City, UT 84104. Representative: John B. Anderson (same address as applicant). Transporting (1) *self-propelled vehicles* each weighing not more than 15,000 pounds, and (2) *tools, parts* and *supplies* used with the commodities in (1) from the facilities of CAL Pacific Machinery Company at West Sacramento, CA, to points in the US (excluding AK and HI), restricted to the transportation. (Hearing site: San Francisco, CA.)

MC 127042 (Sub-292F), filed November 13, 1979. Applicant: HAGEN, INC., P.O. Box 98-Leeds Station, Sioux City, IA 51108. Representative: Joseph B. Davis (same address as applicant). Transporting *such commodities as are dealt in by grocery and food business houses* (except commodities in bulk), from Coloma, MI, to points in AZ, CA, CO, ID, NV, OR, UT, and WA. (Hearing site: Chicago, IL.)

MC 127812 (Sub-27F), filed November 13, 1979. Applicant: TYSON TRUCK LINES, INC., 185–5th Ave. SW., New Brighton MN 55112. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. Transporting *meats, meat products, meat byproducts, dairy products, and articles distributed by meat packing houses,* as described in Sections A, B and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766 (except hides and commodities in bulk) between the facilities of Dubuque Packing Company at or near Dubuque, Vinton, Dennison, and LaMars, IA; Omaha, NE, Mankato and Wichita, KS; and on the one hand, and, on the other hand, points in MN, ND, Upper Peninsula of MI, and Ashland, Barron, Bayfield, Buffalo, Burnett, Clark, Chippewa, Douglas, Dunn, Eau Claire, Iron, Jackson, LaCrosse, Oneida, Pepin, Pierce, Polk, Price, Rusk, Sawyer, St.

Croix, Trempealeau, Washburn, and Vilas Counties, WI. (Hearing site: St. Paul, MN.)

MC 128102 (Sub-3F), filed November 23, 1979. Applicant: STATE MOTOR FREIGHT, INC., 3905 E. 'A' St., Pasco, WA 98300. Representative: Boyd Hartman, P.O. Box 3641, Bellevue, WA 98004. Transporting *fertilizer*, in bulk, between points in ID, OR, and WA. (Hearing site: Pasco or Spokane, WA.)

MC 129222 (Sub-7F), filed November 23, 1979. Applicant: FORD TRUCK LINE, INC., South Lynn Street, Tipton, IA 52772. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. Transporting *liquid fertilizer* and *liquid fertilizer ingredients*, in bulk, (1) From Fulton and Albany, IL to points in IA, and (2) From Burlington, Clear Lake, Muscatine, Clinton, Dubuque, IA to points in IL, MN, MO and WI., (Hearing site: Davenport, IA or Chicago, IL.)

MC 135052 (Sub-25F), filed November 16, 1979. Applicant: ASHCRAFT TRUCKING, INC., 875 Webster Street, Shelbyville, IN 47176. Representative: Warren C. Moberly, 777 Chamber of Commerce Building, 320 North Meridian Street, Indianapolis, IN 46204. Transporting (1) *mineral wool and instulation products and materials, and* (2) *materials and supplies used in the manufacture of the commodities* in (1) from points in AL, AR, CT, DE, FL, GA, IA, IL, KS, KY, LA, MD, ME, MA, MI, MN, MO, MS, NE, NH, NJ, NC, NY, OH, OK, PA, RI, SC, TN, TX, VT, VA, WV, and WI, to Shelbyvile and Indianapolis, IN. (Hearing site: Indianapolis, IN, or Washington, DC.)

MC 135953 (Sub-9F), filed November 13, 1979. Applicant: CHEROKEE LINES, INC., P.O. Box 152, Cushing, OK 74023. Representative: Donald L. Stern, Suite 610, 7171 Mercey Road, Omaha, NE 68106. Transporting *automotive specialties and supplies* (except in bulk), from Kansas City, KS, to points in the US (except AK and HI). (Hearing site: Kansas City, MO.)

MC 135953 (Sub-12F), filed November 29, 1979. Applicant: CHEROKEE LINES, INC., P.O. Box 152, Cushing, OK 74023. Representative: Donald L. Stern, Suite 610, 7171 Mercy Rd., Omaha, NE 68106. Transporting *retail store fixtures,* and *equipment, materials, and supplies* used in the manufacture of retail store fixtures, between the facilities of Lozier Store Fixtures, Inc., at or near (a) Omaha, NE, (b) Cucamonga, CA, (c) Scottsboro, AL, (d) McClure, PA and (e) Kansas City, MO, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Omaha, NE.)

MC 136343 (Sub-190F), filed November 16, 1979. Applicant: MILTON TRANSPORTATION, INC., P.O. Box 355, Milton, PA 17847. Representative: Herbert R. Nurick, P.O. Box 1166, Harrisburg, PA 17108. Transporting *paper, paper products, paper and pulpboard, combined with aluminum and copper;* and *materials and supplies* used in the manufacture and distribution of the foregoing commodities (except commodities in bulk, in tank vehicles), between the facilities of Fortifiber Corporation at or near Attleboro, MA, and Memphis, TN, on the one hand, and, on the other, points in the United States in and east of ND, SD, NE, KS, OK, and TX. (Hearing site: Boston, MA or Memphis, TN.)

MC 136803 (Sub-12F), filed November 15, 1979. Applicant: SIOUX CITY BULK FEED SERVICE, INC., 3324 Highway 75 North, Sioux City, IA 51105. Representative: Edward A. O'Donnell, 1004 29th Street, Sioux City, IA 51104. Transporting *feed and feed ingredients* between points in IL, IA, MN, NE, ND, SD, WI, restricted to the transportation of traffic originating at or destined to points in named states. (Hearing site: Sioux City, IA or Omaha, NE.)

MC 140563 (Sub-50F), filed October 15, 1979. Applicant: W. T. MYLES TRANSPORTATION CO., P.O. Box 321, Conley, GA 30027. Representative: Archie B. Culbreth, Suite 202, 2200, Century Parkway, Atlanta, GA 30345. Transporting *lighting fixtures and parts and accessories for lighting fixtures* from the facilities of Lithonia Lighting, Inc., a Division of National Service Industries, Inc. at or near Conyers and Cochran, GA and Crawfordsville, IN to points, in the US in and east of ND, SD, NE, CO and NM. (Hearing site: Atlanta, GA.)

MC 141443 (Sub-50F), filed November 23, 1979. Applicant: JOHN LONG TRUCKING, INC., 1030 East Denton, Sapulpa, OK 74066. Representative: Wilburn L. Williamson, Suite 615–East, 2601 Northwest Expressway, Oklahoma City, OK 73112. Transporting *furniture parts and materials and supplies* used in the manufacture thereof (except in bulk), between points in the United States in and west of ND, SD, NE, MO, AR, and TX (except AK and HI). (Hearing site: Kansas City or St. Louis, MO.)

Note. —Dual operations may be involved.

MC 143702 (Sub-8F), filed November 13, 1979. Applicant: ALL FREIGHT SYSTEMS, INC., 1026 South 10th St., Kansas, City, KS 66105. Representative: Donald J. Quinn, Suite 900, 1012 Baltimore, Kansas City, MO 64105. Transporting *meats, meat products, meat byproducts, and articles distributed by meat-packing houses,* as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the facilities of Farmland Foods, Inc., at Crete, Lincoln, and Omaha, NE, Carroll, Denison, Des Moines, Ft. Dodge, Iowa Falls and Sioux City, IA, to points in AZ, AR, CA, CO, ID, KS, MO, MT, NV, NM, OK, OR, TX, UT, WA, and WY. (Hearing site: Kansas City, MO.)

Note.—Dual operations may be involved.

MC 144832 (Sub-2F), filed November 15, 1979. Applicant: JOE C. SIKES, d.b.a., GLENN-LEE TRUCKING CO., P.O. Box 281, Springfield, GA 31329. Representative: Michael Hines (same address as applicant). Transporting *gypsum and gypsum products* from the facilities of The Flintkote Company in Chatham County, GA to points in GA, AL, FL, TN, NC, SC. (Hearing site: Savannah, GA.)

MC 145102 (Sub-44F), filed November 15, 1979. Applicant: FREYMILLER TRUCKING, INC., P.O. Box 188, Shullsburg, WI 53586. Representative: Mark S. Gray, 1200 Gas Light Tower, 235 Peachtree Street, N.E., Atlanta, GA 30303. Transporting *meats, meat products, meat by-products and articles distributed by meat-packing houses.* (except hides and commodities in bulk), as defined in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 MCC 209 and 766 from the facilities used by George A. Hormel & Co. at Austin, MN, Ft. Dodge and Ottumwa, IA, and Fremont, NE, to points in CA. (Hearing site: St. Paul, MN or Chicago, IL.)

MC 145102 (Sub-47F), filed November 9, 1979. Applicant: FREYMILLER TRUCKING, INC., P.O. Box 188, Shullsburg, WI 53586. Representative: Paul M. Daniell, P.O. Box 56387, Atlanta, GA 30343. Transporting *cheese and cheese products,* except in bulk, (1) from Rochester and Paynesville, MN to points in AZ, CA and NV and (2) from points in Marathon County, WI to points in the U.S. (except AK and HI). (Hearing site: Los Angeles, CA.)

MC 145152 (Sub-138F), filed November 16, 1979. Applicant: BIG THREE TRANSPORTATION, INC., P.O. Box 706, Springdale, AR 72764. Representative: Don Garrison, P.O. Box 1065, Fayetteville, AR 72701. Transporting *empty steel drums,* from points in AR, IL, IN, KY, MI, MO, NJ, NY, OH, PA, TN and WI to Dayton and Houston, TX. (Hearing site: Houston, TX or Fayetteville, AR.)

MC 145152 (Sub-139F), filed November 16, 1979. Applicant: BIG THREE TRANSPORTATION, INC., P.O. Box 706, Springdale, AR 72764. Representative: Don Garrison, P.O. Box 1065, Fayetteville, AR 72701. Transporting (1) *frozen poultry products* and (2) *commodities* the transportation of which is exempt from economic regulation under 49 USC 10526(a)(6) in mixed loads with frozen poultry products (except commodities in bulk, in tank vehicles) and (3) *materials, equipment and supplies* used in the manufacture and distribution of the commodities in (1) from points in GA, IA, IL, MS, NC, NJ, OH, TN, TX and WV to points in Benton, Carroll, Howard, Pulaski and Washington Counties, AR, Webster County, LA, and Barry and Lawrence Counties, MO and, (4) *frozen poultry products* and (2) commodities the transportation of which is exempt under 49 USC 10526(a)(6) in mixed loads with frozen poultry products (except commodities in bulk, in tank vehicles); from points in Benton, Carroll, Howard, Pulaski and Washington Counties, AR, Webster County, LA and Barry and Lawrence Counties, MO to points in the US (except AK and HI) restricted to the transportation of traffic originating at or destined to the facilities of Tyson Foods, Inc. (Hearing site: Fayetteville, AR.)

MC 145813 (Sub-2F), filed November 16, 1979. Applicant: POINTS WEST TRUCKING, INC., 20727 Santa Clara St, Canyon Country, CA 91351. Representative: Milton W. Flack, 4311 Wilshire Blvd., Suite 300, Los Angeles, CA 90010. Transporting *confectionery products* (except in bulk), in vehicles equipped with mechanical refrigeration, from the facilities of Schrafft Candy Company at or near Boston and Woburn, MA, and Reading, PA, to points in the US (except AK and HI). (Hearing site: Los Angeles CA.)

MC 146423 (Sub-7F), filed November 8, 1979. Applicant: STEPHEN HROBUCHAK, d.b.a. TRANS-CONTINENTAL REFRIGERATED LINES, P.O. Box 1456, Scranton, PA 18503. Representative: Joseph F. Hoary, 121 South Main St., Taylor, PA 18517. Transporting *paint, masonry, cleaning compounds, cement, glazing and caulking compounds, adhesives and advertising material,* from Dunmore, PA to Visalia, CA. (Hearing site: Wilkes Barre, PA.)

MC 146782 (S-26F). Applicant: ROBERTS CONTRACT CARRIER CORP., 300 First Avenue, South, Nashville, TN 37201. Representative: Stephen L. Edwards, 806 Nashville Bank & Trust Building, Nashville, TN 37201. Transportion *iron and steel articles* from the facilities of Georgetown Steel Corporation at or near Georgetown, SC, to points in AL, AR, CT, DE, DC, FL, GA, IL, IN, KY, ME, MD, MA, MI, MN, MS, NH, NJ, NY, NC, OH, PA, RI, TN, VT, VA, WV and WI. (Hearing site: Nashville, TN or Georgetown, SC.)

MC 146992 (S-7F), filed November 13, 1979. Applicant: PHIL-MART TRANSPORTATION, INC., P.O. Box 126, Braselton, GA 30517. Representative: William J. Boyd, 2021 Midwest Road, Suite 205, Oak Brook, 60521. Transporting (1) *Foodstuffs* and (2) *cleaning and scouring compounds, napkins, tablecloths, dishes, cups, trays, and silverware* in mixed loads with foodstuffs, (A) from the facilities of Prime Packing Co., at or near Chicago, IL to points in the US (except AK, AL, AR, FL, GA, HI, IN, KY, LA, MS, OH, TN, TX & WV), restricted to the transportation of traffic originating at the facilities of Prime Packing Co., at or near Chicago, IL (B) From points in the US (except AK and HI) to the facilities of Prime Packing Co., at or near Chicago, IL, restricted to the transportation of traffic destined to the facilities of Prime Packing Co., at or near Chicago, IL). (Hearing site: Chicago IL or Washington, DC.)

MC 148653(F), filed November 9, 1979. Applicant: MILTON WOODARD d.b.a. WOODARD TRUCKING COMPANY, P.O. Box 308, Ripley, TN 38063. Representative: William L. Willis, 708 McClure Building, Frankfort, KY 40601. Transporting *anhydrous ammonia and derivatives of anhydrous ammonia* from Mocane and Woodward, OK, to points in CO, KS, NE, NM, and TX. (Hearing site: Tulsa, OK or Memphis, TN.)

MC 148692 (Sub-2F), filed November 13, 1979. Applicant: EMPIRE DELIVERY, INC., 3930 Blake Street, Denver, CO 80205. Representative: Raymond M. Kelley, 450 Capitol Life Center, Denver, CO 80203. Transporting *beverages in containers and empty containers* on return from points in KY, IL, OH, and MI to Denver CO. (Hearing site: Denver, CO.)

Note.—Applicant intends to interline with other carriers at Detroit, MI.

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Decided: March 10, 1980.

By the Commission, Review Board Number 3, Members Parker, Fortier and Hill.

MC 1824 (Sub-1116F), filed December 7, 1979. Applicant: PRESTON TRUCKING COMPANY, INC., 151 Easton Boulevard, Preston, MD 21655. Representative: Thomas M. Auchincloss, Jr., 918 16th Street NW., Washington, DC 20006. Over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Chicago, IL, and Janesville, WI, from Chicago over US Hwy 20 to junction U.S. Hwy 51, then over US Hwy 51 to Janesville, and return over the same route, serving all intermediate points, and all off-route points in Rock County, WI, and Winnebago County, IL. (Hearing site: Washington, DC.)

Note.—Applicant presently holds irregular route authority to serve points in IL within a 50-mile radius of St. Charles, IL.

MC 22195 (Sub-183F), filed December 10, 1979. Applicant: DAN DUGAN TRANSPORT CO., a corporation, 41st & Grange Ave., Sioux Falls, SD 57105. Representative: F. Fred Fischer (same address as applicant). Transporting *asphalt and road oils,* in bulk, in tank vehicles, from Pillsbury, ND, to points in SD and MN. (Hearing site: Moorhead, MN, or Sioux Falls, SD.)

MC 26825 (Sub-43F), filed December 6, 1979. Applicant: ANDREWS VAN LINES, INC., P.O. Box 1609, Norfolk NE 68701. Representative: J. Max Harding, P.O. Box 82028, Lincoln, NE 68501. Transporting (1) *air conditioning equipment,* from Wichita, KS, to points in the United States (except AK and HI), (2) *air conditioning equipment, outdoor recreational equipment, and accessories and parts for outdoor recreational equipment,* from New Braunfels, TX, to points in the United States (except AK and HI) and (3) *materials, supplies and equipment* used in the manufacture, sale and distribution of air conditioning equipment, outdoor recreational equipment, and *accessories and parts* for outdoor recreational equipment, from points in the United States (except AK and HI), to Wichita, KS, and New Braunfels, TX, restricted to the transportation of traffic which because of its size or weight requires the use of special equipment and originating at or destined to the facilities of The Coleman Company. (Hearing site: Kansas City, MO.)

MC 35835 (Sub-32F), filed December 10, 1979. Applicant: JENSEN TRANSPORT, INC., 300 Ninth Ave. S.E., Independence, IA 50644. Representative: Kenneth F. Dudley, 1501 East Main Street, P.O. Box 279, Ottumwa, IA 52501. Transporting *corn products,* in containers, from Cedar Rapids, IA, to points in IL, IN, MI, MN, and WI. (Hearing site: Des Moines, IA, or Chicago, IL.)

MC 56244 (Sub-92F), filed December 10, 1979. Applicant: KUHN TRANSPORTATION COMPANY, INC.,

P.O. Box 98, R.D. No. 2, Gardners, PA 17324. Representative: J. Bruce Walter, P.O. Box 1146, 410 North Third St., Harrisburg, PA 17108. Transporting *such commodities as is dealt in by retail, wholesale, chain groceries and food business houses* (except commodities in bulk), from Toledo, OH, to points in MD, NJ, and PA. (Hearing site: Harrisburg, PA, or Washington, DC.)

MC 56244 (Sub-93F), filed December 10, 1979. Applicant: KUHN TRANSPORTATION COMPANY, INC., P.O. Box 98, R.D. No. 2, Gardeners, PA 17324. Representative: J. Bruce Walter, P.O. Box 1146, 410 North Third St., Harrisburg, PA 17108. Transporting *paper and pulpboard and paper and pulpboard products, and materials, supplies and equipment* used in connection with or incidental to the production of and distribution of paper and pulpboard products, from the facilities of Alton Box Board Co., in IL, IN, KY, MO, and OH, to points in DE, MD, NJ, and PA, restricted to the transportation of traffic originating at the named origins and destined to the named destinations. (Hearing site: Harrisburg, PA, or Washington, DC.)

MC 61445 (Sub-20F), filed December 10, 1979. Applicant: CONTRACTORS TRANSPORT CORP., 5800 Farrington Ave., Alexandria, VA 22304. Representative: Daniel B. Johnson, 4304 East-West Highway, Washington, DC 20014. Transporting *precast concrete products, and materials, supplies, and equipment* used in the manufacture of precast concrete (except commodities in bulk), between Woodbridge, VA, on the one hand, and, on the other, points in TN, GA, SC, NC, VA, WV, MD, DE, PA, NJ, NY, and DC. (Hearing site: Washington, DC.)

MC 85255 (Sub-71F), filed January 4, 1980. Applicant: PUGET SOUND TRUCK LINES, INC., P.O. Box 24526, Seattle, WA 98124. Representative: Clyde H. MacIver, 1415 Fifth Ave., Suite 1900, Seattle, WA 98171. In foreign commerce only, transporting *glass containers and container closures*, and (b) *materials, equipment, and supplies* used in the manufacture and distribution of glass containers, between ports of entry on the international boundary line between the US and Canada located at or near Blane, Lynden, and Sumas, WA, on the one hand, and, on the other, points in WA. (Hearing site: Seattle, WA or Portland, OR.)

MC 105045 (Sub-137F), filed December 12, 1979. Applicant: R. L. JEFFRIES TRUCKING CO., INC., 1020 Pennsylvania St., Evansville, IN 47701. Representative: Richard C. McGinnis, 711 Washington, Bldg., Washington, DC 20005. Transporting (1) *agricultural implements and equipment, construction, industrial, irrigation and trenching equipment, drainage systems, tree spades, stump cutters, and log-splitters and log-chippers*, (2) *parts, attachments, accessories, and supplies* (except commodities in bulk), for the commodities in (1) above, (3) *trailers designed for the transportation of the commodities in (1) above*, (except trailers designed to be drawn by passenger automobiles), from the facilities of Vermeer Manufacturing Company, at or near Pella, IA, to points in the United States (except AK and HI), and (4) *materials, equipment and supplies* (except commodities in bulk) used in the manufacture or distribution of the commodities named in (1) through (3) above, in the reverse direction. (Hearing site: Des Moines, IA, or Chicago, IL.)

MC 107445 (Sub-26F), filed December 10, 1979. Applicant: UNDERWOOD MACHINERY TRANSPORT, INC., 940 W. Troy Ave., Indianapolis, IN 46225. Representative: K. Clay Smith, P.O. Box 33051, Indianapolis, IN 46203. Transporting *electrical capacitors and equipment, circuit breakers and parts for the foregoing commodities*, from the facilities of Westinghouse Electric Corporation, at Bloomington, IN, to points in the United States (including AK but excluding HI). (Hearing site: Indianapolis, IN, or Chicago, IL.)

MC 107515 (Sub-1311F), filed December 10, 1979. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. Serby, 3390 Peachtree Road, N.E., 5th Floor—Lenox Towers South, Atlanta, GA 30326. Transporting *molded plastic cabinetry and parts* for the foregoing commodities, from the facilities of Mulay Plastics of Holly Springs, Inc., at or near Holly Springs, MS to points in the United States (except AK and HI). (Hearing site: Memphis, TN.)

Note.—Dual operations may be involved.

MC107515 (Sub-1312F), filed December 11, 1979. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. Serby, 3390 Peachtree Road, N.E., 5th Floor—Lenox Towers South, Atlanta, GA 30326. Transporting *mops, and such commodities* as are used in the production, manufacture and distribution of mops, between the facilities of Jones Manufacturing Company, at or near Humboldt, TN, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Memphis, TN.)

Note.—Dual operations may be involved.

MC107515 (Sub-1314F), filed December 10, 1979. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. Serby, 3390 Peachtree Road, N.E., 5th Floor—Lenox Towers South, Atlanta, GA 30326. Transporting *liquid plastics, liquid chemicals, paint, varnish, and resin solution compound* in containers, in vehicles equipped with mechanical refrigeration, from the facilities of Cook Paint and Varnish Company at North Kansas City, MO, and Houston, TX, to points in GA. (Hearing site: Kansas City, MO.)

Note.—Dual operations may be involved.

MC 108835 (Sub-46F), filed December 12, 1979. Applicant: HYMAN FREIGHTWAYS, INC., 2380 Wycliff, St. Paul, MN 55114. Representative: Rodney L. Trocke, 2690 N. Prior Ave., Roseville, MN 55113. Transporting *small arms ammunition, steel junction boxes, and materials, equipment and supplies* used in the manufacture and distribution of small arms ammunition and steel junction boxes (except commodities in bulk) between Anoka, MN, and points in the United States (except AK and HI). (Hearing site: St. Paul, or Minneapolis, MN.)

MC 109725 (Sub-15F), filed December 11, 1979. Applicant: K. F. CROCKER TRANSPORTATION COMPANY, INC., Jewell Hill Road, Ashby, MA 01431. Representative: James M. Burns, Suite 413, 1383 Main St., Springfield, MA 1103. Transporting *molasses and liquid sweetners*, in bulk, in tank vehicles, from Boston, MA, to points in NY and PA. (Hearing site: Boston, MA, or Washington, DC.)

MC 110525 (Sub-1302F), filed May 21, 1979. Applicant: CHEMICAL LEAMAN TANK LINES, INC., 520 East Lancaster Ave., Downingtown, PA 19335. Representative: Thomas J. O'Brien (same address as applicant). Transporting *chemicals*, in bulk, in tank vehicles, from Lake Charles, LA, to points in the United States (except AK and HI). (Hearing site: New Orleans, LA.)

MC 113855 (Sub-502F), filed December 6, 1979. Applicant: INTERNATIONAL TRANSPORT, INC., 2450 Marion Road SE, Rochester, MN 55901. Representative: Michale E. Miller, 502 First National Bank Bldg., Fargo, ND 58126. Transporting (1) *self-propelled compaction equipment, maintenance equipment and sweepers*, between New Ulm, MN, on the one hand, and, on the other, points in the United States (except AK and HI), and (2) *parts and accessories* for the commodities named

in (1) above, between New Ulm and Minneapolis, MN, on the one hand, and, on the other, ports of entry of the international boundary line between the United States and Canada located in Ontario, Canada. (Hearing site: Minneapolis-St. Paul, MN.)

MC 114015 (Sub-29F), filed January 4, 1980. Applicant: HUSS, INCORPORATED, Highway 46 West, Chase City, VA 23924. Representative: Morton E. Kiel, Suite 1832, 2 World Trade Center, New York, NY 10048. *Contract carrier,* transporting, *strapping and strapping machines,* (1) from New Britain, CT, and Woodside, NY, to points in MD, VA, AL, WV, KY, TN, NC, SC, GA, and FL, and (2) from New Britain, CT, to Woodside, NY, under continuing contract(s) with Delta Strapping Industries, Inc., of Woodside, NY. (Hearing site: New York, NY.)

MC 116254 (Sub-306F), filed December 11, 1979. Applicant: CHEM-HAULERS, INC., 118 East Mobile Plaza, Florence, AL 35630. Representative: Mr. Hampton M. Mills (same address as applicant). Transporting *cullet,* in dump vehicles, from Cedar Rapids, Davenport, and Des Moines, IA, to points in MN, IL, and IN. (Hearing site: Pittsburgh, PA, or Washington, DC.)

MC 121805 (Sub-9F), filed December 12, 1979. Applicant: ARKANSAS EXPRESS, INC., 1200 Arkansas Avenue, North Little Rock, AR 72114. Representative: James M. Duckett, 927 Pyramid Life Building, Little Rock, AR 72201. Over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between Little Rock, AR, and the AR–MO State line: from Little Rock over Interstate 40 Hwy to Conway, AR, then over U.S. Hwy 65 to the AR–MO State line, and return over the same routes, servicing all intermediate points, (2) between Harrison, AR, and Gateway, AR: from Harrison over U.S. Hwy 65 to junction U.S. Hwy 62, then over U.S. Hwy 62 to Gateway, and return over the same route, serving all intermediate points, (3) between Harrison, AR, and Mountain Home, AR: from Harrison over U.S. Hwy 65 to junction U.S. Hwy 62, then over U.S. Hwy 62 to Mountain Home, and return over the same route, serving all intermediate points, (4) between Harrison, AR, and Jasper, AR, over AR Hwy 7, serving all intermediate points. (5) Between Mountain Home, AR and Calico Rock, AR: from Mountain Home over AR Hwy 5 to Calico Rock, and return over the same route, serving all intermediate points, with alternate routes connecting 3 miles south of Mountain Home with access route to Norfork Dam, access route Spencer to Hutchison access route Hutchinson to Dam Site, and return over access route to junction of access route and AR Hwy 5 one mile north of Norfork, restricted against service to and from Calico Rock, AR. (6) between Clinton, AR, and Pangburn, AR, over AR Hwy 16, serving all intermediate points and the off-route point of Shirley, AR. (7) between Harrison, AR and Lead Hill, AR, over AR Hwy 7, serving all intermediate points. (8) between Flippin, AR, and Mountain Home, AR: from Flippin over AR Hwy 178 to junction AR Hwy 5, then over AR Hwy 5 to Mountain Home, and return over the same route, serving all intermediate points; and off-route points within 10 miles thereof. (9) between Gassville, AR and Midway, AR: from Gassville over U.S. Hwy 62 to junction AR Hwy 126, then over AR Hwy 126 to Midway, and return over the same route, serving all intermediate points, and off-route points within 10 miles thereof. (10) between Mountain Home, AR and the AR–MO State line: from Mountain Home over AR Hwy 5 to the AR–MO State line, and return over the same route, serving all intermediate points. (11) between the junction of AR Hwy 16 and 330 and Fairfield Bay, AR, over AR Hwy 330, serving all intermediate points. (12) between Eureka Springs, AR, and Holiday Island Suburban Improvement District, in Carroll County, AR: from Eureka Springs over AR Hwy 23 and unnumbered county road to Holiday Island Suburban Improvement District, and return over the same route, serving all intermediate points. (13) between Yellville, AR, and the facilities of Holiday Manufacturing Company, Inc.: from Yellville over AR Hwy 14 to junction AR Hwy 235, then over AR Hwy 235 to Holiday Manufacturing Company, Inc., and return over the same route, serving all intermediate points. And (14) between Mountain Home, AR, and Henderson, AR, over U.S. Hwy 62, serving all intermediate points. Applicant intends to tack the above authority with his existing authority. (Hearing site: Little Rock, AR.)

MC 121805 (Sub-10F), filed December 12, 1979. Applicant: ARKANSAS EXPRESS, INC., 1200 Arkansas Avenue, North Little Rock, AR 72114. Representative: James M. Duckett, 927 Pyramid Life Bldg., Little Rock, AR 72201. Over regular routes, transporting *general commodites* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between Little Rock, AR, and Fort Smith, AR: From Little Rock over AR Hwy 10 to Williams Junction, then over AR Hwy 9 to Perry, then over AR hwy 10 to Greenwood, then over AR Hwy 10S to junction U.S. Hwy 71, then over U.S. Hwy 71 to Fort Smith, and return over the same route, serving all intermediate points, in connection with the carrier's presently authorized regular route operations, with service in the Fort Smith commercial zone restricted to points within AR, and restricted against service to intermediate points on Interstate Hwy 40 between Morrilton and Fort Smith, pursuant to the Commission's Superhighway Rule. (2) Between Arkansas River and Plainview, AR, over AR Hwy 60, serving all intermediate points. (3) between Ola, AR, and junction of AR Hwys 7 and 60; from Ola over AR Hwy 7 to junction AR Hwy 60, and return over the same route, serving all intermediate points. (4) between Ola, AR, and Rover, AR, over AR Hwy 28, serving all intermediate points, and the off-route point of Kingston, AR. (5) between Rover, AR, and Danville, AR, over AR Hwy 27, serving all intermediate points. (6) between Booneville, AR, and State Sanatorium, AR: from Booneville over AR Hwy 116 to junction AR Hwy 23, then over AR Hwy 23 to State Sanatorium, and return over the same route, serving all intermediate points. (7) between Little Rock, AR, and Morrilton, AR: From Little Rock over U.S. Hwy 65 to Conway, then over U.S. Hwy 64 to Morrilton, and return over the same route, serving all intermediate points. (8) between Little Rock, AR, and the AR–TN State line, over U.S. Hwy 70, serving all intermediate points. (9) between Fort Smith, AR, and Harrison, AR: From Fort Smith over Interstate Hwy 540 to junction Interstate Hwy 40, then over Interstate Hwy 40 to junction U.S. Hwy 71, then over U.S. Hwy 71 to junction AR Hwy 16, then over AR Hwy 16 to junction AR Hwy 74, then over AR Hwy 74 to junction AR Hwy 68, then over AR Hwy 68 to junction U.S. Hwy 62, then over U.S. Hwy 62 to Harrison, and return over the same route, for operating convenience only. (10) between junction of AR Hwys 60 and 113 and junction of AR Hwys 113 and 10: From junction of AR Hwys 60 and 113 over AR Hwy 113 to junction AR Hwy 10, and return over the same route, serving all intermediate points, and the off-route point of Fourche, AR. (11) between junction U.S. Hwy 70 and AR Hwy 17 and junction AR Hwy 17 and U.S. 79: From junction U.S. Hwy 70 and AR Hwy 17 over AR Hwy 17 to junction U.S. Hwy 79, and return over the same route, serving all

intermediate points. (Hearing site: Little Rock, AR.)

Note.—Applicant intends to tack the above authority with his existing authority.

MC 124174 (Sub-165F), filed January 3, 1980. Applicant: MOMSEN TRUCKING CO., an IA corporation, 13811 "L" St., Omaha, NE 68137. Representative: Karl E. Momsen, (address same as applicant). Transporting *composition board, and wood fiber products,* from the facilities of United States Gypsum Company, at (a) Lisbon Falls and Auburn, ME, (b) Danville, VA, and (c) Greenville, MS, to points in the U.S. (except AK and HI). Condition: The person or persons who appear to be engaged in common control must either file an application under 49 U.S.C. 11343 (a) or submit an affidavit indicating why such approval is unnecessary. (Hearing site: Chicago, IL, or Washington, DC.)

Note.—Dual operations may be involved.

MC 125985 (Sub-29F), filed June 28, 1979, previously published in the FR issue of February 12, 1980. Applicant: AUTO DRIVEAWAY COMPANY, 310 S. Michigan Ave., Chicago, IL 60604. Representative: Daniel B. Johnson, 4304 East-West Hwy., Washington, DC 20014. Transporting *automobiles* and *trucks,* in secondary movements, in driveaway service, and *boats, trailers, and contractors' equipment,* between points in AR, AL, AZ, CA, CO, FL, KY, LA, MS, NJ, NM, NV, NY, OH, TN, TX, and UT. (Hearing site: Houston, TX.)

Note.—This republication indicates the correct territorial description.

MC 126904 (Sub-37F), filed December 10, 1979. Applicant: H.C. PARRISH TRUCK SERVICE, INC., Rural Route 2, P.O. Box 264, Freebury, IL 62243. Representative: James W. Patterson, 1200 Western Savings Bank Bldg., Philadelphia, PA 19107. Transporting *pipe, pipe fittings, couplings, building materials, and materials* used in the installation of the foregoing commodities from the facilities of CertainTeed Corporation, at Eads, TN, Social Circle, GA, Williamsport, MD, and Ambler, PA, to those points in the United States in and east of ND, SD, NE, KA, OK, and TX. (Hearing site: Philadelphia, PA.)

MC 127204 (Sub-17F), filed December 7, 1979. Applicant: KINDSVATER, INC., P.O. Box 1027, Dodge City, KS 67801. Representative: Clyde N. Christey, Kansas Credit Union Bldg., 1010 Tyler, Suite 110L, Topeka, KS 66612. Transporting *liquid fertilizer solutions,* from points in Finney County, KS to points in CO, OK, and TX. (Hearing site: Kansas City, MO.)

MC 133405 (Sub-13F), filed January 3, 1980. Applicant: BOWIE HALL TRUCKING, INC., P.O. Box 1470, LaPlata, MD 20646. Representative: Daniel B. Johnson, 4304 East-West Hwy., Washington, DC 20014. Transporting (1) *malt beverages,* (a) from Detroit, MI, Trenton, NJ, Baltimore, MD, and Pittsburgh, Latrobe, Allentown, and Philadelphia, PA, to the District of Columbia, and (b) from Allentown, PA, to Baltimore, MD, and the District of Columbia; and (2) *wine,* from Baltimore, MD, to the District of Columbia. (Hearing site: Washington, DC.)

MC 133805 (Sub-44F), filed December 10, 1979. Applicant: LONE STAR CARRIERS, INC., Rt. 1, Box 48, Tolar, TX 76476. Representative: Harry F. Horak, Suite 115, 5001 Brentwood Stair Road, Fort Worth, TX 76112. Transporting *meats, meat products, meat by products, and articles distributed by meat-packing houses* described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the facilities of Freezer Services, Inc., Finney County, KS, to points in the United States (except HI & AK). (Hearing site: Fort Worth or Amarillo, TX.)

MC 134404 (Sub-52F), filed August 19, 1979. Applicant: AMERICAN TRANS-FREIGHT, INC., P.O. Box 796, Manville, NJ 08835. Representative: Morton E. Kiel, Suite 1832, 2 World Trade Center, New York, NY 10048. *Contract carrier,* transporting *such commodities* as are dealt in or used by manufacturers of backery goods (except commodities in bulk), between McComb, OH, on the one hand, and, on the other, points in the United States in and east of ND, SD, NE, KS, OK, and TX, under continuing contract(s) with Nabisco, Inc., of E. Hanover, NJ; and (2) *Spaghetti, macaroni,* and *noodle products,* from Jersey City, NJ, to points in the United States in and east of MN, IA, MO, AR, and LA, under continuing contract(s) with C. F. Mueller Company, of Jersey City, NJ. (Hearing site: New York, NY.)

MC 134404 (Sub-61F), filed December 7, 1979. Applicant: AMERICAN TRANS-FREIGHT, INC., P.O. Box 796, Manville, NJ 08835. Representative: Eugene M. Malkin, Suite 1832, 2 World Trade Center, New York, NY 10048. Contract carrier, transporting *pesticides, fertilizer and agricultural chemicals* (except in bulk), and applicators for the foregoing commodities, between those points in the United States in and east of MN, IA, MO, AR, and LA, under continuing contract(s) with Chevron Chemical Company, of Perth Amboy, NJ. (Hearing site: New York, NY.)

Note.—Dual operations may be involved.

MC 134404 (Sub-62F), filed July 26, 1979, previously noticed in the FR issue of February 12, 1980 as MC-134404 Sub 51F. Applicant: AMERICAN TRANS-FREIGHT, INC., P.O. Box 796, Manville, NJ 08835. Representative: Eugene M. Malkin, Suite 1832, 2 World Trade Center, New York, NY 10048. *Contract carrier,* transporting (1) *paper, paper products, dispenser boxes, liquid soaps,* and *equipment, materials and supplies* (except commodities in bulk) used in the manufacture and distribution of the foregoing commodities, between the facilities of Georgia Pacific Corp. at or near Crossett, AR, Burlington, IA, Lockport and Taylorville, IL, Gary, IN, Kalamazoo, MI, Woodland, ME, Lyons Falls, Plattsburgh, Voorheesville, Frankfort, Warwick and Utica, NY, Cincinnati, OH, and Gilman, VT, on the one hand, and, on the other, points in the United States in and east of MT, WY, CO, and NM, and (2) *paper* and *paper products,* and *equipment, materials and supplies* used in the manufacture of the foregoing commodities (except commodities in bulk), from the facilities of International Paper Co., at or near Jay, ME, and Ticonderoga and Corinth, NY, to points in CT, DE, ME, MA, NH, NJ, NY, PA, RI, VT, and VA, under continuing contract(s) in (1) above with Georgia Pacific Corporation, of Stamford, CT, and in (2) above, with International Paper Company, of New York, NY. (Hearing site: New York, NY.)

Note.—This republication corrects the docket number. Dual operations may be involved.

MC 134405 (Sub-93F), filed December 10, 1979. Applicant: BACON TRANSPORT COMPANY, a corporation, P.O. Box 1134, Ardmore, OK 73401. Representative: Wilburn L. Williamson, Suite 615-East, The Oil Center, 2601 Northwest Expressway, Oklahoma City, OK 73112. Transporting *zinc,* in bins, from Coffeyville, KS, to Ardmore, OK. (Hearing site: Oklahoma City, OK.)

MC 135524 (Sub-85F), filed December 10, 1979. Applicant: G.F. TRUCKING CO., a Corporation, P.O. Box 229, 1028 West Rayen Ave., Youngstown, OH 44501. Representative: George Fedorisin, 914 Salts Springs Road, Youngstown, OH 44509. Transporting (1) *iron and steel articles,* and (2) *materials, equipment, and supplies used in the manufacture and distribution of iron and steel articles* between Sharon, PA, on the one hand, and, on the other, points in CT, DE, ME, MA, NH, NJ, NY,

PA, RI, VT, and DC. (Hearing site: Columbus, OH, or Pittsburgh, PA.)

MC 135924 (Sub-21F), filed December 10, 1979. Applicant: SIMONS TRUCKING CO., INC., 3851 River Road, Grand Rapids, MN 55744. Representative: Samuel Rubenstein, 301 North Fifth St., Minneapolis, MN 55403. Transporting *machinery parts for paper making machinery,* between Grand Rapids, MN, on the one hand, and, on the other, Appleton, Beloit, Green Bay, and Neenah, WI. (Hearing site: Minneapolis or St. Paul, MN.)

MC 136315 (Sub-104F), filed December 12, 1979. Applicant: OLEN BURRAGE TRUCKING, INC., Route 9, Box 28, Philadelphia, PA 39350. Representative: Fred W. Johnson, Jr., 1500 Deposit Guaranty Plaza, P.O. Box 22628, Jackson, MS 39205. Transportating *plastic articles and accessories, and materials and supplies* (except in bulk, in tank vehicles) used in the manufacture, distribution and transportation of the foregoing commodities, between those points in the United States in and east of TX, OK, KS, NE, SD, and ND, restricted to the transportation of traffic originating at or destined to the facilities of Robintech, Inc. (Hearing site: Fort Worth, TX, or Washington, DC.)

Note.—Dual operations may be involved.

MC 138115 (Sub-8F), filed December 10, 1979. Applicant: FRANK D. CORBIN, d.b.a. F.D. CORBIN MOTOR EXPRESS, Box 57, Lemar Road, Lemasters, PA 17231. Representative: Edward N. Button, 580 Northern Ave., Hagerstown, MD 21740. *Contract carrier* transporting *business forms, computer tapes, off-track betting tickets, lottery tickets, carbon paper, tissue paper, and materials and supplies (except in bulk) used in the manufacture* of the foregoing commodities, between Ashland, VA, Canton and Solon, OH, Kings Mountain, NC, Chambersburg, PA, Hagerstown, MD, Greenville, SC, and Phoenix, AZ, on the one hand, and, on the other, points in the United States (except AK and HI), under continuing contract(s) with Arnold Graphic Industries, Inc., of Uniontown, OH. (Hearing site: Hagerstown, MD.)

MC 139495 (Sub-502F), filed December 6, 1979. Applicant: NATIONAL CARRIERS, INC., 1501 East 8th St., P.O. Box 1358, Liberal, KS 67901. Representative: Herbert Alan Dubin, 1320 Fenwick Lane, Silver Spring, MD 20910. Transportating *meats, meat products and meat byproducts, and articles distributed by meatpacking houses,* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766, from the facilities of Wisconsin Beef Industries, at or near Eau Claire, WI, to points in the United States (except AK and HI). (Hearing site: Washington, DC.)

MC 139495 (Sub-503F), filed December 7, 1979. Applicant: NATIONAL CARRIERS, INC., 1501 East 8th St., P.O. Box 1358, Liberal, KS 67901. Representative: Herbert Alan Dubin, 1320 Fenwick Lane, Silver Spring, MD 20910. Transporting *foodstuffs and materials, equipment, and supplies* used in the manufacture, and distribution of foodstuffs (except commodities in bulk and frozen foods), between the facilities of Friday Canning Corporation, at or near New Richmond, Oakfield, Eden, Sussex, Coleman, Chilton, Shawano, and Gillette, WI, on the one hand, and, on the other, point in the United States (except AK and HI). (Hearing site: Washington, DC.)

MC 140265 (Sub-11F), filed December 12, 1979. Applicant: LARRY E. HICKOX, d.b.a., LARRY E. HICKOX TRUCKING, Box 95, Casey, IL 62420. Representative: Robert T. Lawley, 300 Reisch Bldg., Springfield, IL 62701. *Contract carrier* transporting (1) *liquid paint dryer and liquid petroleum products,* in containers, from Franklin, PA, to Los Angeles and Oakland, CA, and (2) *chemicals,* in containers, from Akron and Baberton, OH, and Natrium, WV, to points in AZ, CA, CO, ID, NV, NM, UT, WA, and WY, under continuing contract(s) in (1) with Mooney Chemicals, Inc., of Cleveland, OH, and in (2) with P.P.G. Industries, Inc., of Pittsburg, PA. (Hearing site: Chicago, IL, or Cleveland, OH.)

MC 140294 (Sub-8F), filed December 10, 1979. Applicant: GENERAL FREIGHTS, INC., P.O. Box 1946, Middleburg Pike, Hagerstown, MD 21740. Representative: Dixie C. Newhouse, 1329 Pennsylvania Ave., P.O. Box 1417, Hagerstown, MD 21740. Over regular routes, transporting *general commodities* (except those of unusual value), between Hagerstown, MD and Washington, D.C., with no service at intermediate points: From Hagerstown, MD, over Interstate Hwy 70 to Frederick, MD, then over Interstate Hwy 270 to junction Interstate Hwy 495, thence over Interstate Hwy 495 to junction U.S. Hwy 1 then over U.S. Hwy 1 to Washington, DC, and return over the same route. (Hearing site: Washington, DC.)

Note.—The authority granted herein is limited in point of time to a period of five (5) years from the date of issuance.

MC 140645 (Sub-15F), filed December 12, 1979. Applicant: UNITED TRUCKING, INC., 100 Stoffel Drive, Tallapoosa, GA 30176. Representative: Clyde W. Carver, P.O. Box 720434, Atlanta, GA 30328. *Contract carrier* transporting (a) *buffing, polishing, cleaning, scouring, and washing compounds, solvents starch, bleach, lubricating oils, carbon gum and sludge removing compounds, disinfectant, softeners and sizings, janitorial supplies and equipment, and pesticides (except in bulk),* from Kankakee, Momence, and Danville, IL, Piscataway, Metuchen and Clarksville, NJ, Atlanta, GA, Santa Fe Springs, CA, Berkeley, RI, Memphis, TN, and Mauldin and Greenville, SC, to points in the United States (except AK & HI) and (b) *machinery, materials and supplies* used in the manufacture and distribution of the commodities named in (a) above (except in bulk), in the reverse direction, under continuing contract(s) with Texize Division of Morton-Norwich Products, Inc., of Greenville, SC. (Hearing site: Atlanta, GA or Washington, DC.)

MC 141774 (Sub-34F), filed December 7, 1979. Applicant: R & L TRUCKING CO., INC., 105 Rocket Ave., Opelika, AL 36801. Representative: Robert E. Tate, P.O. Box 517, Evergreen, AL 36401. Transporting (1) *anti-freeze, anti-freeze proprietory compounds, de-icing proprietory, windshield washer solvent (except in bulk, in tank vehicles), and containers,* from points in Montgomery County, AL, to points in FL, and (2) *materials, supplies and equipment as are used in the manufacture, sale and distribution of the commodities named in (1) above (except in bulk, in tank vehicles),* from points in FL, to points in Montgomery County, AL. (Hearing site: Montgomery or Birmingham, AL.)

Note.—Dual operations may be involved.

MC 141804 (Sub-323F), filed December 10, 1979. Applicant: WESTERN EXPRESS, DIVISION of INTERSTATE RENTAL, INC., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same address as applicant). Transporting *general commodities* (except those of unusual value, household goods as defined by the Commission, commodities in bulk, frozen foods, and commodities requiring special equipment), from Seattle, WA, to those points in the United States in and east of ND, SD, NE, KS, OK, and TX. (Hearing site: Los Angeles, CA.)

Note.—The authority granted herein is limited in points of time to a period of five (5) years from the date of issuance.

MC 141804 (Sub-324F), filed December 10, 1979. Applicant: WESTERN EXPRESS, DIVISION of INTERSTATE RENTAL, INC., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same address as applicant). Transporting *paper and paper products*

and commodities dealt in and used by paper manufacturing companies, from points in WI to points in the United States (except AK and HI). (Hearing site: Los Angeles, CA.)

MC 141804 (Sub-325F), filed December 10, 1979. Applicant: WESTERN EXPRESS, DIVISION of INTERSTATE RENTAL, INC., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same address as applicant). Transporting *medical instruments and supplies, and hospital supplies,* (1) from De Land, FL, to North Brunswick, NJ, St. Louis, MO, and Elgin, IL, and (2) from Norfolk, NE, to Anaheim, CA, and North Brunswick, NJ. (Hearing site: Los Angeles, CA.)

MC 141804 (Sub-326F), filed December 10, 1979. Applicant: WESTERN EXPRESS, DIVISION of INTERSTATE RENTAL, INC., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same address as applicant). Transporting *fibers,* from Spartansburg, SC, Covington, Dalton, Bainbridge and Oxford, GA, Anniston, AL, Covington, VA, and Turnersville, NC, to the facilities of Ozite Corporation, a Division of Brunswick Corporation, at Anaheim and Culver City, CA, and Libertyville, IL. (Hearing site: Los Angeles, CA.)

MC 141804 (Sub-327F), filed December 10, 1979. Applicant: WESTERN EXPRESS, DIVISION of INTERSTATE RENTAL, INC., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same address as applicant). Transporting *motor and parts, and accessories for motors,* from the facilities of Mercury Marine, a Division of Burnswich Corporation, at or near Fond du Lac, WI, to points in the United States (except AK and HI). (Hearing site: Los Angeles, CA.)

MC 141804 (Sub-328F), filed December 10, 1979. Applicant: WESTERN EXPRESS, DIVISION OF INTERSTATE RENTAL, INC., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same address as applicant). Transporting *carpeting and carpet tile,* between Anaheim, CA, and Libertyville, IL. (Hearing site: Los Angeles, CA.)

MC 141804 (Sub-332F), filed January 4, 1980. Applicant: WESTERN EXPRESS, DIVISION OF INTERSTATE RENTAL, INC., A NV CORPORATION, P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same as applicant). Transporting *motor vehicle parts and accessories,* from Chicago, IL, to points in the US (except AK and HI). (Hearing site: Los Angeles, CA.)

MC 141804 (Sub-387F), filed July 26, 1979, previously published in the Federal Register issue of February 12, 1980 as MC 141804 Sub 259F. Applicant: WESTERN EXPRESS, Division of Interstate Rental, Inc., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same address as applicant). Transporting *bicycles, motorcycles, outboard motors, and parts and accessories* for the foregoing commodities, between the facilities of U.S. Suzuki Motor Corp., in Los Angeles and Orange Counties, CA, Elk Grove and Franklin Park, IL, River View and Detroit, MI, Atlanta, GA, Camden, Gloucester City, and Pennsuaken, NJ, Baltimore, MD, Dallas, TX, and Seattle, WA, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Los Angeles or San Francisco, CA.)

Note.—This republication corrects the docket number.

MC 141914 (Sub-73F), filed December 10, 1979. Applicant: FRANKS AND SON, INC., Route 1, Box 108A, Big Cabin, OK 74332. Representative: Kathrena J. Franks (same address as applicant). Transporting *confectionery,* from the facilities of Schrafft Candy Company, at or near Woburn and Boston, MA, to points in the United States (except AK and HI). (Hearing site: Boston, MA.)

MC 141914 (Sub-74F), filed December 10, 1979. Applicant: FRANKS AND SON, INC., Route 1, Box 108A, Big Cabin, OK 74332. Representative: Kathrena J. Franks (same address as applicant). Transporting *refrigerant jell, cooler boxes, athletic and gymnasium equipment, athletic dressings, freezers, and refrigerators,* from the facilities of Divajex Company, at or near Tustin, CA, to points in the United States (except AK and HI). (Hearing site: Tustin, CA.)

MC 142364 (Sub-24F), filed December 10, 1979. Applicant: KENNETH SAGELY d.b.a. SAGLEY PRODUCE, 2802 Kibler Road, Van Duren, AR 72956. Representative: Don Garrison, P.O. Box 1065, Fayetteville, AR 72701. Transporting *animal feed, and animal feed ingredients and additives, and materials and supplies used in the manufacture and distribution of animal feed,* between the facilities of Kal-Kan Foods, Inc. at or near Columbus, OH, and Matton, IL, on the one hand, and, on the other, points in AL, AR, CT, DC, DE, GA, IL, IN, KY, MA, MD, ME, MI, MS, NH, NJ, NY, OH, PA, RI, TN, TX, VA, VT, and WI. (Hearing site: Columbus, OH, or Fort Smith, AR.)

MC 142714 (Sub-1F), filed July 2, 1979. Applicant: HAWKEYE BUILDING SUPPLY TRANSPORTATION CO., a corporation, 204 Iowa St., Sioux City, IA 51102. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. *Contract carrier,* transporting (1) *lumber, lumber products, and building materials,* and (2) *such commodities* as are dealt in by building materials dealers (except commodities described in (1) above, and those in bulk), from points in AL, AR, GA, IL, LA, IN, MS, MO, OH, TX, and WI to points in MN, IA, NE, and SD, under continuing contract(s) with Hawkeye Building Supply Co., of Sioux City, IA. (Hearing site: Sioux City, IA, or Lincoln, NE.)

MC 143775 (Sub-123F), filed December 7, 1979. Applicant: PAUL YATES, INC., 6601 West Orangewood, Glendale, AZ 85301. Representative: Michael R. Burke (same address as applicant). Transporting *general commodities* except those of unusual value, classes A and B explosives, commodities in bulk, household goods as defined by the Commission, and commodities requiring special equipment), (1) between points in CA, on the one hand, and, on the other, points in the United States (except CA, AK and HI) and (2) from Milwaukee, WI, to points in AZ, CO, FL, GA, LA, MA, NY, OR, PA, TX, and WA. (Hearing site: Washington, DC.)

Note.—Dual operations may be involved.

MC 144054 (Sub-10F), filed January 3, 1980. Applicant: BILL LITTLEFIELD TRUCKING, INC., 775 Vilas Rd., Medford, OR 97501. Representative: Lawrence V. Smart, Jr., 419 NW 23rd Ave., Portland, OR 97210. Transporting *frozen foods,* from the facilities of Harry and David, at or near Medford, OR, to points in the US (except AK and HI). (Hearing site: Medford, OR.)

MC 144054 (Sub-11F), filed January 3, 1980. Applicant: BILL LITTLEFIELD TRUCKING, INC., 775 E. Vilas Rd., Medford, OR 97501. Representative: Lawrence V. Smart, Jr., 419 NW 23rd Ave., Portland, OR 97210. Transporting *(1) gift wrapped and packaged foods, food products, and commodities* dealt in by retail gift shops (except frozen), in vehicles equipped with mechanical refrigeration, (2) *plants and bulbs* otherwise exempt from economic regulation under 49 U.S.C. § 10526(a)(6), when transported in mixed loads with the commodities in (1) above, and (3) *empty containers and trailers,* between the facilities of Harry and David, at Medford, OR, on the one hand, and on the other, points in OR. (Hearing site: Medford, OR.)

MC 145535 (Sub-1F), filed July 30, 1979. Applicant: JACK BISCEGLIA AND ANNETTE BISCEGLIA d.b.a. FRONT RANGE LIMOUSINE SERVICE, 4640 East County Rd. 66, Wellington, CO 80549. Representative: Roy M. Wittstruck, 215 West Oak St., Suite 602, Fort Collins, CO 80521. Over regular

routes, transporting *passengers, and their baggage, and unaccompanied baggage and express,* limited to the transportation of not more than 15 passengers (excluding the driver) in one vehicle at one time, between Fort Collins, CO, and the Stapleton International Airport, at Denver, CO: (1) from Fort Collins over Interstate Hwy 25 to junction Interstate Hwy 70, then over Interstate Hwy 70 to the Stapleton International Airport, serving Loveland, CO, as an intermediate point; and (2) from Fort Collins, CO, over Interstate Hwy 25 to junction CO Hwy 392, then over CO Hwy 392 to Greeley, CO, then over U.S. Hwy 85 to the Stapleton International Airport, serving Windsor, Stapleton, and Greeley, CO as intermediate points. (Hearing site: Fort Collins or Denver, CO.)

MC 145715 (Sub-11F), filed January 3, 1980. Applicant: BELL TRUCKING, INC., 2504 Industrial Park Rd., Van Buren, AR 72956. Representative: Benard J. Kompare, Suite 1600, 10 S. LaSalle St, Chicago, IL 60603. Transporting *copper wire,* from Canastota, NY, to facilities of Precision Cable Manufacturing Corporation, at or near Garland, TX, restricted to the transportation of traffic originating at the named origin and destined to the named destination. (Hearing site: Dallas or Fort Worth, TX.)

MC 146514 (Sub-4F), filed May 8, 1979. Applicant: CLANCY CARTING & STORAGE CO., INC., 795 Beahan Rd., Rochester, NY 14624. Representative: Jack H. Blanshan, Suite 200, 205 West Touhy Ave., Park Ridge, IL 60068. Transporting *such commodities* as are dealt in or used by manufacturers of photographic products (except commodities in bulk), (1) from the facilities of Eastman Kodak Company, at Rochester, NY, to San Ramon, Palo Alto, Whittier, and Hollywood, CA, Dallas TX, Oak Brook, IL, and Windsor, CO; (2) from the facilities of Eastman Kodak Company, at or near Windsor, CO, to Palo Alto, San Ramon and Whittier, CA, Dallas, TX, or Dayton, NJ, Oak Brook, IL, and (3) from San Ramon and Whittier, CA, to the facilities of Eastman Kodak Company, at Windsor, CO, restricted in (1), (2), and (3) above to the transportation of traffic originating at the named origins and destined to the named destinations. (Hearing site: Washington, DC.)

MC 146655 (Sub-2F), filed December 7, 1979. Applicant: VICTOR PARSONS, d.b.a. VIC'S TRUCKING COMPANY, 518 20th St., Dunbar, WV 25064. Representative: John M. Friedman, 2930 Putnam Ave., Hurricane, WV 25526. Transportating *X-ray machines, film, chemicals, medicines, and hospital and physicians equipment, supplies and accessories* (except commodities in bulk), between Charleston, WV, on the one hand, and, on the other, points in Bell, Boyd, Carter, Floyd, Greenup, Harlan, Johnson, Knott, Lawrence, Leslie, Letcher, Lewis, Martin, Perry and Pike Counties, KY, and Gallia, Lawrence and Meigs Counties, OH. (Hearing site: Charleston, WV.)

MC 146704 (Sub-7F), filed December 10, 1979. Applicant: FALCON MOTOR TRANSPORT, INC., 1250 Kelly Ave., Akron, OH 44216. Representative: Paul F. Beery, 275 East State St., Columbus, OH 43215. *Contract carrier* transporting *such commodities* as are dealt in or used by manufacturer and processors of rubber and steel products, between Akron, OH, on the one hand, and, on the other, those points in NJ south of NJ Hwy 33, those points in NY west of a line beginning at Port Jervis, NY, and extending along US Hwy 209 to Kingston, NY, then along US Hwy 9–W to Albany, NY then along US Hwy 20 to Syracuse, NY, then along US Hwy 11 to Watertown, NY, and then along NY Hwy 12 to Clayton, NY, and points in IL, MD, MI, and WI, under continuing contract(s) with General Tire and Rubber, of Akron, OH. (Hearing site: Columbus, OH.)

MC 146794 (Sub-2F), filed June 18, 1979. Applicant: PACIFIC NORTHWEST CONTRACT CARRIERS, INC., 3010 N. Jackson Hwy, Sheffield, AL 35660. Representative: Peter H. Glade, 555 Benjamin Franklin, One Southwest Columbia, Portland, OR 97258. *Contract carrier,* transporting (1) *trailer axles, suspensions, landing gears, fifth wheels, hitches, and mechanical refrigeration units,* and (2) *parts* for the commodities named in (1) above, from points in the United States in and east of MN, IA, MO, AR, and LA to points in the United States in and west of MN, IA, MO, AR, and LA (except AK and HI), under continuing contract(s) with Standard Parts & Equipment Co., of Portland, OR. (Hearing site: Portland, OR, or San Francisco, CA.)

MC 147235 (Sub-2F), filed August 6, 1979, previously published in the FR issue of February 12, 1980. Applicant: CST, INC., 1 Scout Ave., South Kearny, NJ. Representative: Michael R. Werner, 167 Fairfield Road, P.O. Box 1049, Fairfield, NJ. 07006. *Contract carrier,* transporting *such commodities* as are dealth in or used by department stores, between New York, NY, on the one hand, and, on the other, points in DE, MD, NC, NJ, NY, OH, PA, VA, SC, and WV, under a continuing contract(s) with S. E. Nichols, of New York, NY. (Hearing site: New York, NY.)

Note.—This republication indicates the correct territorial description. Dual operations may be involved.

MC 147474 (Sub-2F), filed December 7, 1979. Applicant: SOUTHWIRE COMPANY, TRANSPORTATION DIVISION, a corporation, 126 Fertilla St., Carrollton, GA 30117. Representative: Theodore M. Forbes, Jr., 4000 First National Bank Tower, Atlanta, GA 30303. Transporting *paper products,* from Anniston, Brewton, and Mobile, AL, Crossett and Little Rock, AR, Fernandina Beach and Jacksonville, FL, Bogalusa and Pineville, LA, Plymouth, NC, Chester and Philadelphia, PA, Columbia, SC, and Dallas, Houston, and Silsbee, TX, to points in GA. (Hearing site: Atlanta, GA.)

MC 147474 (Sub-3F), filed December 7, 1979. Applicant: SOUTHWIRE COMPANY, TRANSPORTATION DIVISION, a corporation, 126 Fertilla St., Carrollton, GA 30117. Representative: Theodore M. Forbes, Jr., 4000 First National Bank Tower, Atlanta, Ga 30303. Transportating *crude rubber synthetics,* from Camden, AR, Baton Rouge, LA, and Borger and Port Neches, TX to points in GA. (Hearing site: Atlanta, GA.)

MC 147485 (Sub-1F), filed June 28, 1979, previously published in the FR issue of February 12, 1980. Applicant: TRUCK TRAIN TRANSFER, INC., Snapps Ferry Road, Post Office Box 3303, Davy Crockett Station, Greeneville, TN 37743. Representative: Charles Ephraim, Suite 600, 1250 Connecticut Ave., N.W., Washinton, D.C. 20036. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in Anderson, Bledsoe, Blout, Bradley, Cannon, Carter, Cocke, Cumberland, Davidson, De Kalb, Grainger, Greene, Hamblen, Hamilton, Hawkins, Jefferson, Johnson, Knox, Loudon, McMinn, Meigs, Monroe, Morgan, Polk, Putnam, Rhea, Roane, Rutherford, Sevier, Smith, Sullivan, Sumner, Unicoi, Union, Van Buren, Warren, Washington, White, Williamson, and Wilson Counties, TN, Buncombe, Haywood, Madison, Swain, and Yancey Counties, NC., Catoosa, Dade, Murray, Walker, and Whitfield Counties, GA, and Scott and Washington Counties, VA, restricted to the transportation of traffic having a prior or subsequent by rail. (Hearing site: Knoxville, TN.)

Note.—This republication indicates the correct commodity and territorial description.

MC 148865 (Sub-2F), filed December 12, 1979. Applicant: DISTRIBIX, INC., Drawer AB, Florissant, MO 63031. Representative: James F. Mauze, 7701 Forsyth, Suite 550, St. Louis, MO 63105. *Contract carrier,* transporting *floor covering, padding and adhesives,* (1) between Quincy, IL, on the one hand, and, on the other, points in Schuyler, Scotland, Clark, Adair, Knox, Lewis, Livingston, Linn, Macon, Shelby, Marian, Chariton, Randolph, Monroe, Ralls, Audrain, Pike, Boone, Cole and Callaway Counties, MO, (2) between Quincy, IL, on the one hand, and, on the other, points in Lee, Des Moines, Henry, Van Buren, Jefferson and Louisa Counties, IA, (3) between Decatur, IL, on the one hand, and, on the other, points in Parke and Clay Counties, IN, and (4) between Peoria, IL, on the one hand, and on the other, points in Scott County, IA, under continuing contract(s) with Floorco, Inc., of Peoria, IL. (Hearing site: St. Louis, MO.)

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Decided: Feb. 21, 1980

By the Commission, Review Board Number 2, Members Eaton, Liberman and Jensen. Member Jensen not participating.

MC 200 (Sub-426F), filed December 10, 1979. Applicant: RISS INTERNATIONAL CORPORATION, 903 Grand Ave., Kansas City, MO 64106. Representative: H. Lynn Davis (same address as applicant). *Over regular routes,* transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Ardmore, OK, and Fort Worth, TX, from Ardmore, over Interstate Hwy 35 to junction Interstate Hwy 35W, then over Interstate Hwy 35W to Ft. Worth and return over the same route, serving all intermediate points. (Hearing site: Kansas City, MO.)

MC 720 (Sub-74F), filed December 17, 1979. Applicant: BIRD TRUCKING COMPANY, INC., P.O. Box 227, Waupun, WI 53963. Representative: Tom Westerman (same address as applicant). Transporting *foodstuffs,* from facilities of the Creamette Company, at Minneapolis, MN, to Chicago, IL, restricted to the transportation of traffic originating at the named origin and destined to the named destination. (Hearing site: Minneapolis, MN, or Madison, WI.)

MC 2900 (Sub-410F), filed December 13, 1979. Applicant: RYDER TRUCK LINES, INC., 2050 Kings Road, P.O. Box 2408–R, Jacksonville, FL 32203. Representative: Paul Dixon (same address as applicant). Transporting *automobile parts,* and *materials, supplies,* and *equipment* used in the manufacture of motor vehicles, between Janesville, WI, Bay City, Flint, Grand Blanc, Lansing, Saginaw, and Tecumseh, MI, on the one hand, and on the other, points in IL, IN, OH, MO, and WI. (Hearing site: Detroit, MI, or Washington, DC.)

MC 2900 (Sub-412F), filed December 19, 1979. Applicant: RYDER TRUCK LINES, INC., 2050 Kings Rd., P.O. Box 2408, Jacksonville, FL 32203. Representative: S. E. Somers, Jr. (same address as applicant). Transporting *building and insulating materials,* from the facilities of the CertainTeed Corporation, in York County, PA, to points in CT, ME, and VT. (Hearing site: Philadelphia, PA, or Washington, DC.)

MC 11220 (Sub-189F), filed December 17, 1979. Applicant: GORDONS TRANSPORTS, INC., 185 West McLemore Ave., Memphis, TN 38101. Representative: James J. Emigh, P.O. Box 59, Memphis, TN 38101. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between the facilities of CIBA–GEIGY Corporation, at or near McIntosh, AL, on the one hand, and, on the other, Louisville, KY, points in IL, IN, IA, MN, OH, and WI, points in Lancaster, Cass, Sarpy, Douglas, Saunders, Dodge and Washington Counties, NE, and points in Shelby County, TN. (Hearing site: Washington, DC.)

Note.—Applicant intends to tack the authority sought with its regular-route authority at common points in IN, KY, OH, and TN to serve points presently authorized in AR, KS, KY, MO, OK, WV, and DeSoto County, MS.

MC 11220 (Sub-191F), filed December 27, 1979. Applicant: GORDONS TRANSPORTS, INC., 185 West McLemore Avenue, Memphis, TN 38101. Representative: James J. Emigh, P.O. Box 59, Memphis, TN 38101. Transporting (1) *roofing, insulation,* and *composition board,* and (2) *materials, equipment,* and *supplies* used in the installation or manufacture of the commodities in (1) above between Atlanta, GA, North Kansas City, MO, Irving and Houston, TX, Memphis, TN, and Meridian, MS, on the one hand, and, on the other, points in AL, AR, GA, IL, IN, KY, LA, MI, MN, MS, MO, OH, OK, PA, TN, TX, and WI, restricted to the transportation of traffic originating at or destined to the facilities of Owens Corning Fiberglas Corp. (Hearing site: Washington, DC.)

Note.—The authority sought could be joined with applicant's regular route authority at common points in AR, IL, KY, MO, and OH, to provide service from or to presently authorized points in IA, KS, and WV.

MC 16831 (Sub-33F), filed December 13, 1979. Applicant: MID SEVEN TRANSPORTATION COMPANY, a corporation, 2323 Delaware Avenue, Des Moines, IA 50317. Representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. Transporting (1)*(a) lawn mowers, snowblowers, garden tractors, shredders, and tillers,* and (b) *parts* and *accessories* for the commodities in (1)(a), and (2) *materials and supplies* used in the manufacture and distribution of the commodities in (1) above, between Des Moines, IA, on the one hand, and, on the other points in IL, IN, KY, MI, MN, MO, OH, and WI. (Hearing site: Chicago, IL, or Des Moines, IA.)

MC 21040 (Sub-5F), filed December 17, 1979. Applicant: ARTHUR JOHNSON CO., a corporation, 3230 West 38th St., Chicago, IL 60632. Representative: David W. Johnson (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in Chicago, IL., on the one hand, and, on the other, points in IL, IA, IN, KY, MN, OH, and WI, and those points in MI on a line beginning at Muskegon, MI, and extending along Interstate Hwy 96 to Grand Rapids, MI, and then along MI Hwy 21 to Port Huron, MI, restricted to the transportation of traffic having a prior or subsequent movement by air, rail, or water. Condition: Cancellation at applicant's written request of its certificate of Registration No. MC–21040 Sub-No. 3, issued February 25, 1964. (Hearing site: Chicago, IL.)

MC 35320 (Sub-386F), filed December 17, 1979. Applicant: T.I.M.E.–DC, INC., 2598 74th Street, P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). *Over regular routes,* transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Benchcraft, Inc., at or near Blue Mountain, Falkner and New Albany, MS, as off-route points in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Memphis, TN, or Jackson, MS.)

Note.—Applicant intends to tack the sought rights to its existing authority.

MC 35320 (Sub-426F), filed December 14, 1979. Applicant: T.I.M.E.-DC, INC., 2598 74th Street, P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Over regular routes, transporting *general commodities,* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of the Hudson Pulp and Paper Division of Georgia Pacific, at or near Thomson, NY, as an off-route point in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Syracuse, NY, or Washington, DC.)

Note.—Applicant intends to tack the sought rights to its existing authority.

MC 35320 (Sub-427F), filed December 14, 1979. Applicant: T.I.M.E.-DC, INC., 2598 74th Street, P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Over regular routes, transporting *general commodities,* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Miller Chemical and Fertilizer Corp., at or near Ranson, WV, as an off-route point in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Baltimore, MD, or Washington, DC.)

Note.—Applicant intends to tack the sought rights to its existing authority.

MC 35320 (Sub-428F), filed December 14, 1979. Applicant: T.I.M.E.-DC, INC., 2598 74th Street, P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Over regular routes, transporting *general commodities,* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Consolidated Thermoplastics Co., at or near Chippewa Falls, WI, as an off-route point in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Milwaukee, WI, or Chicago, IL.)

Note.—Applicant intends to tack the sought rights to its existing authority.

MC 35320 (Sub-429F), filed December 14, 1979. Applicant: T.I.M.E.-DC, INC., 2598 74th Street, P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Over regular routes, transporting *general commodities,* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Gould, Inc., at or near Eau Claire, WI, as an off-route point in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Milwaukee, WI, or Chicago, IL.)

Note.—Applicant intends to tack the sought rights to its existing authority.

MC 35320 (Sub-430F), filed December 14, 1979. Applicant: T.I.M.E.-DC, INC., 2598 74th Street, P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Transporting *general commodities,* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of the Johnson Division of VOP, Inc., at Lafayette and Scott, LA, as off-route points in connection with carrier's otherwise authorized regular-route operations. (Hearing site: St. Paul, MN or Chicago, IL.)

MC 35320 (Sub-431F), filed December 14, 1979. Applicant: T.I.M.E.-DC, INC., 2598 74th Street, P.O. Box 2550, Lubbock, TX 79408. Representative: Kennth G. Thomas (same address as applicant). Transporting *general commodities,* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of the General Electric Co., at or near Ft. Edward and Hudson Falls, NY, as off-route points in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Syracuse, NY, or Washington, DC.)

Note.—Applicant intends to tack the sought rights to its existing authority.

MC 35320 (Sub-432F), filed December 14, 1979. Applicant: T.I.M.E.-DC, INC., 2598 74th Street, P.O. Box 2550, Lubbock, TX 79408. Representative: Kennth G. Thomas (same address as applicant). Transporting *general commodities,* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of the Vermont Marble Co., at or near Proctor, VT, as an off-route point in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Syracuse, NY, or Washington, DC.)

Note.—Applicant intends to tack the sought rights to its existing authority.

MC 35320 (Sub-433F), filed December 14, 1979. Applicant: T.I.M.E.-DC, INC., 2598 74th Street, P.O. Box 2550, Lubbock, TX 79408. Representative: Kennth G. Thomas (same address as applicant). Transporting *general commodities,* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Carris Reels, Inc., at or near Rutland, VT, as an off-route point in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Syracuse, NY, or Washington, DC.)

Note.—Applicant intends to tack the sought rights to its existing authority.

MC 35320 (Sub-434F), filed December 14, 1979. Applicant: T.I.M.E.-DC, INC., 2598 74th Street, P.O. Box 2550, Lubbock, TX 79408. Representative: Kennth G. Thomas (same address as applicant). Transporting *general commodities,* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Basic Equipment Inc., at or near Lithonia, GA, as an off-route point in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Atlanta, GA, or Washington, DC.)

Note.—Applicant intends to tack the sought rights to its existing authority.

MC 35320 (Sub-435F), filed December 14, 1979. Applicant: T.I.M.E.-DC, INC., 2598 74th Street, P.O. Box 2550, Lubbock, TX 79408. Representative: Kennth G. Thomas (same address as applicant). Transporting *general commodities,* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (A) from the facilities of Velsicol Chemical Corp., at or near Glendale, AZ, to points in AL, LA, MS, and TX, and (B) from the facilities of Velsicol Chemical Corp., at or near Beaumont, TX, to points in AZ, CA, CO, OK, OR, and WA. (Hearing site: Phoenix, AZ, or Houston, TX.)

MC 35320 (Sub-436F), filed December 14, 1979. Applicant: T.I.M.E.-DC, INC., 2598 74th Street, P.O. Box 2550, Lubbock, TX 79408. Representative: Kennth G. Thomas (same address as applicant). Transporting *general commodities,* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Greif Brothers Corp., at or near Cullman, AL, as an off-route point in connection with carrier's otherwise authorized regular-route operations.

(Hearing site: Chattanooga, TN, or Washington, DC.)

Note.—Applicant intends to tack the sought rights to its existing authority.

MC 35320 (Sub-437F), filed December 14, 1979. Applicant: T.I.M.E.–DC, INC., 2598 74th Street, P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Container Service Inc., at or near Texarkana, TX, an off-route point in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Boston, MA, or Washington, DC.)

MC 35320 (Sub-438F), filed December 14, 1979. Applicant: T.I.M.E.–DC, INC., 2598 74th Street, P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Exeter, NH, on the one hand, and, on the other, Holly Springs, MS, restricted to the transportation of traffic originating at or destined to the facilities of the American Sandpaper Co. (Hearing site: Boston, MA, or Washington, DC.)

MC 35320 (Sub-439F), filed December 14, 1979. Applicant: T.I.M.E.–DC, INC., 2598 74th Street, P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Transporting *general commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of General Mailing Services and Sales, Inc., at or near (a) Houston, TX, (b) New Orleans, LA, and (c) Jackson, MS, as off-route points in connection with carriers' otherwise authorized regular-route operation. (Hearing site: Chicago, IL, or Washington, DC.)

MC 35320 (Sub-440F), filed December 14, 1979. Applicant: T.I.M.E.–DC, INC., 2598 74th Street, P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Transporting *general commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of the Proctor and Gamble Co., at or near Pineville, LA, as an off-route point in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Chicago, IL, or Washington, DC.)

Note.—Applicant intends to tack the sought rights to its existing authority.

MC 35320 (Sub-441F), filed December 14, 1979. Applicant: T.I.M.E.–DC, INC., 2598 74th Street, P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Transporting *general commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of The Dixie Equipment Co., Division of the Scott Co., Inc., at or near Birmingham, AL, as an off-route point in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Chattanooga, TN, or Washington, DC.)

Note.—Applicant intends to tack the sought rights to its existing authority.

MC 35320 (Sub-442F), filed December 14, 1979. Applicant: T.I.M.E.–DC, INC., 2598 74th Street, P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Transporting *general commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Ives Business Forms, Inc., at or near New Orleans, LA, as an off-route point in connection with carrier's otherwise authorized regular-route operations. (Hearing site: New Orleans, LA, or Washington, DC.)

Note.—Applicant intends to tack the sought rights to its existing authority.

MC 35320 (Sub-443F), filed December 14, 1979. Applicant: T.I.M.E.–DC, INC., 2598 74th Street, P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Puckett Brothers Manufacturing Co., Inc., at or near Lithonia, GA, as an off-route point in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Atlanta, GA, or Washington, DC.)

Note.—Applicant intends to tack the sought rights to its existing authority.

MC 35320 (Sub-444F), filed December 14, 1979. Applicant: T.I.M.E.–DC, INC., 2598 74th Street, P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Dixie-Narco, Inc., at or near Ranson, WV, as an off-route point in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Baltimore, MD, or Washington, DC.)

Note.—Applicant intends to tack the sought rights to its existing authority.

MC 35320 (Sub-446F), filed December 17, 1979. Applicant: T.I.M.E.–DC, INC., 2598 74th Street, P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of the Daubert Chemical Co., at or near (a) Cullman, AL, (b) Dixon, IL, and (c) McKinney, TX, as off-route points in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Nashville, TN, or Washington, DC.)

Note.—Applicant intends to tack the sought rights to its existing authority.

MC 35320 (Sub-447F), filed December 17, 1979. Applicant: T.I.M.E.–DC, INC., 2598 74th Street, P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Hysol Division, The Dexter Corp., at or near Olean, NY, as an off-route point in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Buffalo, NY, or Washington, DC.)

Note.—Applicant intends to tack to its existing authority.

MC 35320 (Sub-449F), filed December 17, 1979. Applicant: T.I.M.E.–DC, INC., 2598 74th Street, P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Tucel Industries, Inc., at or near Brandon, Forest Dale, and Middlebury, VT, as off-route points in connection

with carrier's otherwise authorized regular-route operations. (Hearing site: Boston, MA, or Washington, DC.)

Note.—Applicant intends to tack to its existing authority.

MC 35320 (Sub-450F), filed December 17, 1979. Applicant: T.I.M.E.-DC, INC., 2598 74th Street, P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Over regular routes transporting *general commodities,* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between the facilities of Baker Brothers at or near Stoughton, MA, on the one hand, and, on the other points in the United States (except AK and HI). (Hearing site: Boston, MA or Washington, DC.)

MC 35320 (Sub-451F), filed December 17, 1979. Applicant: T.I.M.E.-DC, INC., 2598 74th Street, P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Transporting *general commodities,* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Polymers, Inc., at or near East Middlebury, VT, as an off-route point in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Boston, MA or Washington, DC.)

Note.—Applicant intends to tack the sought rights to its existing authority.

MC 35320 (Sub-452F), filed December 17, 1979. Applicant: T.I.M.E.-DC, INC., 2598 74th Street, P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Transporting *general commodities,* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of the Mortell Co., at or near Kankakee, IL, as an off-route point in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Chicago, IL or Washington, DC.)

Note.—Applicant intends to tack the sought rights to its existing authority.

MC 35320 (Sub-453F), filed December 16, 1979. Applicant: T.I.M.E.-DC, INC., 2598 74th Street, P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Transporting *general commodities,* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Concord Fabrics Inc., at or near Milledgeville, GA, as an off-route point in connection with carrier's otherwise authorized regular route operations. (Hearing site: Atlanta, GA or Washington, DC.)

Note.—Applicant intends to tack the sought rights to its existing authority.

MC 35320 (Sub-454F), filed December 16, 1979. Applicant: T.I.M.E.-DC, INC., 2598 74th Street, P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Transporting *general commodities,* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between the facilities of Wal Mart Stores, Inc., at or near Palestine, TX, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Dallas, TX or Washington, DC.)

MC 35320 (Sub-465F), filed December 31, 1979. Applicant: T.I.M.E.-DC, INC., 2598 74th St., P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Transporting *general commodities,* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Teledyne Wah Chang Huntsville, at or near Huntsville, AL, as an off-route point in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Chattanooga, TN, or Atlanta, GA.)

Note.—Applicant intends to tack its sought rights to its existing authority.

MC 35320 (Sub-466F), filed December 31, 1979. Applicant: T.I.M.E.-DC, Inc., 2598 74th St., P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas, (same address as applicant). Transporting *general commodities,* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Steel City Wholesalers, Inc., at or near Birmingham, AL, as an off-route point in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Birmingham, AL, or Atlanta, GA.)

Note.—Applicant intends to tack its sought rights to its existing authority.

MC 35320 (Sub-467F), filed December 31, 1979. Applicant: T.I.M.E.-DC, Inc., 2598 74th St., P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas, (same address as applicant). Transporting *general commodities,* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Rangaire Corp., at or near Cleburne, TX, as an off-route point in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Dallas or Ft. Worth, TX.)

Note.—Applicant intends to tack its sought rights to its existing authority.

MC 35320 (Sub-468F), filed December 31, 1979. Applicant: T.I.M.E.-DC, Inc., 2598 74th St., P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas, (same address as applicant). Transporting *general commodities,* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Eagle Pass and Laredo, TX, on the one hand, and, on the other, Minneapolis, MN, restricted to the transportation of traffic originating at or destined to the facilities of the Longyear Co., at the named points. (Hearing site: Minneapolis, MN, or Chicago, IL.)

MC 35320 (Sub-469F), filed December 31, 1979. Applicant: T.I.M.E.-DC, Inc., 2598 74th St., P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas, (same address as applicant). Transporting *general commodities,* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Mooney Chemical Co., at or near Franklin, PA, as an off-route point in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Cleveland, OH, or Washington, DC.)

Note.—Applicant intends to tack its sought rights to its existing authority.

MC 35320 (Sub-470F), filed December 31, 1979. Applicant: T.I.M.E.-DC, INC., 2598 74th Street, P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Transporting *general commodities,* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of PPG Industries, Inc., at or near Birmingham, AL, as an off-route point in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Birmingham, AL or Washington, DC.)

Note.—Applicant intends to tack the sought rights with its existing authority.

MC 35320 (Sub-471F), filed December 31, 1979. Applicant: T.I.M.E.-DC, INC., 2598 74th Street, P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Transporting *general commodities,* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Sessions Tree Farmer, Inc., at or near Montgomery, AL, an off-route point in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Montgomery, AL or Washington, DC.)

Note.—Applicant intends to tack the sought rights to its existing authority.

MC 35320 (Sub-473F), filed December 31, 1979. Applicant: T.I.M.E.-DC, INC., 2598 74th Street, P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Transporting *general commodities,* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Samson Cordage Works, Inc., Division of Samson Ocean Systems, Inc. at or near Anniston, AL, as an off-route point in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Birmingham, AL or Washington, DC.)

Note.—Applicant intends to tack the sought rights to its existing authority.

MC 35320 (Sub-485F), filed December 31, 1979. Applicant: T.I.M.E.-DC, INC., 2598 74th Street, P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Transporting *general commodities,* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between the facilities of the Mohawk Rubber Co., at or near Columbus, OH, on the one hand, and, on the other, points in AL, LA, and MS. (Hearing site: Columbus, OH or Washington, DC.)

MC 35320 (Sub-504F), filed December 27, 1979. Applicant: T.I.M.E.-DC, INC., 2598 74th Street, P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Over regular routes, transporting *general commodities,* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Robbins Tire and Rubber Co., at or near Tuscumbia, AL, as an off-route point in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Chattanooga, TN or Washington, DC.)

Note.—Applicant intends to tack the sought rights to its existing authority.

MC 35320 (Sub-505F), filed December 27, 1979. Applicant: T.I.M.E.-DC, INC., 2598 74th Street, P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas, (same address as applicant). Over regular routes, transporting *general commodities,* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Century Heavy Duty Parts, at or near Sheffield, AL, as an off-route point in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Chattanooga, TN or Washington, DC.)

Note.—Applicant intends to tack to its existing authority.

MC 35320 (Sub-507F), filed December 27, 1979. Applicant: T.I.M.E.-DC, INC., 2598 74th Street, P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas, (same address as applicant). Over regular routes, transporting *general commodities,* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of A. C. Inc., at or near Huntsville, AL, as an off-route point in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Chattanooga, TN or Washington, DC.)

Note.—Applicant intends to tack to its existing authority.

MC 35320 (Sub-508F), filed December 27, 1979. Applicant: T.I.M.E.-DC, INC., 2598 74th Street, P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas, (same address as applicant). Over regular routes, transporting *general commodities,* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of L & L Steel Co., Inc., at or near Helena, AL, as an off-route point in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Chattanooga, TN or Washington, DC.)

Note.—Applicant intends to tack to its existing authority.

MC 35320 (Sub-509F), filed December 27, 1979. Applicant: T.I.M.E.-DC, INC., 2598 74th Street, P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas, (same address as applicant). Over regular routes, transporting *general commodities,* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Industrial Crane & Manufacturing Corp. at or near Helena, AL, as an off-route point in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Chattanooga, TN or Washington, DC.)

Note.—Applicant intends to tack to its existing authority.

MC 52460 (Sub-273F), filed December 20, 1979. Applicant: ELLEX TRANSPORTATION, INC., 1420 W. 35th Street, P.O. Box 9637, Tulsa, OK 74107. Representative: Wilburn L. Williamson, Suite 615 East, The Oil Center, 2601 Northwest Expressway, Oklahoma City, OK 73112. Transporting *paper, paper products, and cellulose products,* from the facilities of The Proctor & Gamble Distributing Co., at or near Neelys Landing, MO, to points in AR, LA, OK, and TX. (Hearing site: Cincinnati, OH.)

MC 56640 (Sub-44F), filed December 12, 1979. Applicant: DELTA LINES, INC., 33 Hegenberger Road, Oakland, CA 94621. Representative: Donald E. Fernaays, 4040 East McDowell Road, Suite 320, Phoenix, AZ 85008. Transporting *canned goods* (except frozen) from the facilities of Campbell Soup Co., at Sacramento, CA, to points in OR and WA. (Hearing site: San Francisco, CA.)

MC 59150 (Sub-171F), filed December 13, 1979. Applicant: PLOOF TRUCK LINES, INC., 1414 Lindrose Street, Jacksonville, FL 32206. Representative: Martin Sack, Jr., 1754 Gulf Life Tower, Jacksonville, FL 32207. Transporting *zinc, zinc products, and alloys* from the facilities of Jersey Miniere Zinc Company, at or near Clarksville, TN, to points in AL, GA, FL, NC, SC, LA, and MS. (Hearing site: Jacksonville, FL or Nashville, TN.)

MC 59150 (Sub-172F), filed December 13, 1979. Applicant: PLOOF TRUCK LINE, INC., 1414 Lindrose Street, Jacksonville, FL 32206. Representative: Martin Sack, Jr., 1754 Gulf Life Tower, Jacksonville, FL 32207. Transporting (1) *pipe, pipe fittings, valves, and hydrants,* and (2) *materials, equipment,* and *supplies* used in the manufacture, installation, and distribution of the commodities in (1) above, between the facilities of Clow Corporation in

Talladega County, AL, on the one hand, and, on the other, points in FL, GA, LA, MS, NC, SC, TN, TX and VA. (Hearing site: Chicago, IL or Jacksonville, FL.)

MC 59150 (Sub-173F), filed December 19, 1979. Applicant: PLOOF TRUCK LINES, INC., 1414 Lindrose Street, Jacksonville, FL 32206. Representative: Martin Sack, Jr., 1754 Gulf Life Tower, Jacksonville, FL 32207. Transporting *iron and steel articles,* and *equipment, materials and supplies* used in the manufacture, installation, and distribution of iron and steel articles, between points in AL, FL, GA, LA, MS, NC, SC, TN, VA, and TX, restricted to traffic originating at or destined to the facilities of Florida Steel Corporation. (Hearing site: Jacksonville or Tampa, FL.)

MC 59150 (Sub-174F), filed December 20, 1979. Applicant: PLOOF TRUCK LINES, INC., 1414 Lindrose Street, Jacksonville, FL 32206. Representative: Martin Sack, Jr., 1754 Gulf Life Tower, Jacksonville, FL 32207. Transporting *construction materials,* and *equipment, materials and supplies* used in the manufacture, installation, and distribution of construction materials, between points in AL, FL, GA, KS, LA, MS, NC, OK, SC, AR, TN, TX, and VA, restricted to the transportation of traffic originating at or destined to the facilities of National Gypsum Company. (Hearing site: Charlotte, NC or Jacksonville, FL.)

MC 59640 (Sub-79F), filed December 17, 1979. Applicant: PAULS TRUCKING CORPORATION, Three Commerce Drive, Cranford, NJ 07016. Representative: Michael A. Beam, 301 Blair Road, Woodbridge, NJ 07095. *Contract carrier,* transporting *such commodities* as are dealt in or used by toy and variety stores, between Dallas and Houston, TX, and Compton and San Jose, CA, on the one hand, and, on the other, those points in the United States on and east of a line beginning at the mouth of the Mississippi River and extending along the Mississippi River to its junction with the western boundary of Itasca County, MN, then north along the western boundaries of Itasca and Koochiching Counties, MN, to the international boundary line between the United States and Canada, under continuing contract(s) with Lash-Tamaron, Division of Toys "R" Us, Inc., of Saddle Brook, NJ. (Hearing site: Newark, NJ or New York.)

MC 61231 (Sub-165F), filed December 27, 1979. Applicant: EASTER ENTERPRISES, INC., d.b.a., Ace Lines, Inc., P.O. Box 1351, Des Moines, IA 50305. Representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. Transporting (1) *buildings,* and *building parts,* and (2) *materials, accessories,* and *supplies* used in the installation and construction of the commodities in (1) above, (except commodities in bulk), between the facilities of Butler Manufacturing Company, at San Marcos, TX, on the one hand, and, on the other, points in AR, AZ, CO, ID, IL, IN, IA, KS, KY, LA, MI, MN, MS, MO, MT, NE, NM, ND, OH, OK, SD, TN, WA, WI, and WY, restricted to the transportation of traffic originating at or destined to the named facilities. (Hearing site: Chicago, IL.)

MC 65941 (Sub-62F), filed December 28, 1979. Applicant: TOWER LINES, INC., P.O. Box 6010, Wheeling, WV 26003. Representative: Paul M. Daniell, P.O. Box 56387, Atlanta, GA 30343. Over regular routes, transporting *general commodities,* (except those of unusual value, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment) (1) between Conneaut and Cincinnati, OH, from Conneaut over OH Hwy 7 to Chesapeake, OH, then over U.S. Hwy 52 to Cincinnati, and return over the same route, (2) between Brookside and New Paris, OH, from Brookside, over Interstate Hwy 70 to junction OH Hwy 121, then over U.S. Hwy 121 to New Paris, and return over the same route, (3) between Brookside and Sandusky, OH, over U.S. Hwy 250, (4) between Columbus and Cincinnati, OH, over Interstate Hwy 71, (5) between Cleveland and Marietta, OH, over Interstate Hwy 77, (6) between Petersburg and Columbia, OH, from Petersburg over Interstate Hwy 76 to junction Interstate Hwy 80, then over Interstate Hwy 80 to Columbia, and return over the same route, (7) between East Liverpool and Van Wert, OH, over Interstate Hwy 30, (8) between East Palestine and Aurora, OH, from East Palestine, over OH Hwy 170 to junction Hwy 14, then over Hwy 14 to Columbiana, OH, then over OH Alternate Hwy 14 to Deerfield, OH, and then over OH Hwy 14 to Aurora, and return over the same route, (9) between Ashtabula, OH and junction OH Hwy 11 and Interstate Hwy 30, over OH Hwy 11, (10) between Portsmouth and Toledo, OH, over U.S. Hwy 23, (11) between Circleville and Zanesville, OH, over U.S. Hwy 22, (12) between Rockford and Columbus, OH, over Interstate Hwy 33, (13) between Findley and Pioneer, OH, over Hwy 15, (14) between Beaver Dam and Findley, OH, over Interstate Hwy 75, and (15) between Cincinnati and Beaver Dam, OH, over Interstate Hwy 15, serving, in connection with routes (1) to (15 above, all intermediate points and points in OH not on the above described routes as off-route points, restricted in routes (1) to (15) above to the transportation of traffic moving from, to, or through Martins Ferry, OH. (Hearing site: Wheeling, WV.)

Note.—Applicant states that the purpose of this application is to convert an existing irregular-route authority to regular route. Condition: Issuance of a certificate in this proceeding is subject to the coincidental cancellation, at applicant's written request, of Certificate No. MC-65941 Sub-No. 36.

MC 67450 (Sub-101F), filed December 20, 1979. Applicant: PETERLIN CARTAGE CO., a corporation, 9651 S. Ewing Avenue, Chicago, IL 60617. Representative: Joseph Winter, 29 South LaSalle Street, Chicago, IL 60603. Transporting *adhesives,* from Paxton, IL, to those points in the United States in and east of MT, WY, CO, and NM. (Hearing site: Chicago, IL.)

MC 69901 (Sub-39F), filed December 17, 1979. Applicant: COURIER-NEWSOM EXPRESS, INC., P.O. Box 270, Columbus, IN 47201. Representative: Edward G. Bazelon, 39 South LaSalle St., Chicago, IL 60603. Transporting: (1) *Automotive parts* and *accessories, parts for automotive accessories, advertising materials, electrical appliances, empty carboys, gas cylinders, steel drums, metal furniture, platforms and skids, radios, radio parts, rubber hose, steel folding ironing boards, and steel laundry tubs* from Fort Wayne, IN, to points in OH, and (2) *parts for automotive accessories,* advertising materials, acetylene gas, acids, bolts, brass, copper, cleaning fluids, chemicals, cartons, carbide, castings, electric motors, electrical appliance parts, excelsior wood, glass, insulated wire, iron and steel articles, lumber, machinery, machinery parts, metal stampings, metal tubing, nuts, platforms and skids, radio parts, radio cabinets, rubber hose, solder, and welding rods; and *petroleum products,* in containers, in the reverse direction. (Hearing site: Chicago, IL.)

MC 82841 (Sub-280F), filed December 28, 1979. Applicant: HUNT TRANSPORTATION, INC., 10770 "I" Street, Omaha, NE 68127. Representative: Donald L. Stern, 7171 Mercy Road, Suite 610, Omaha, NE 68106. Transporting (1)(a) *pipe, pipe fittings, building materials,* and *insulating materials,* and (b) *materials and supplies* used in the installation of the commodities in (1)(a) above, and (2) *materials equipment and supplies* used in the manufacture or distribution of the commodities in (1) above, (except commodities in bulk) between points in the United States (except AK and HI), restricted to the transportation of traffic

originating at or destined to the facilities used by CertainTeed Corporation. (Hearing site: Philadephia, PA, or Washington, DC.)

Note.—Dual operations may be involved.

MC 94201 (Sub-188F), filed December 14, 1979. Applicant: BOWMAN TRANSPORTATION, INC., P.O. Box 17744, Atlanta, GA 30316. Representative: Maurice F. Bishop, 601–09 Frank Nelson Building, Birmingham, AL 35203. Over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) Between New Orleans and Baton Rouge, LA: (a) from New Orleans over U.S. Hwy 11 to junction U.S. Hwy 190, then over U.S. Hwy 190 to Baton Rouge, and return over the same route, (b) from New Orleans over U.S. Hwy 11 to junction Interstate Hwy 12, then over Interstate Hwy 12 to Baton Rouge, and return over the same route, (c) over Interstate Hwy 10, and (d) from New Orleans over U.S. Hwy 90 to junction LA Hwy 18, at or near Westwego, LA, then over LA Hwy 18 to junction LA Hwy 1, at or near Donaldson, LA, then over LA Hwy 1 to Baton Rouge, and return over the same route; (2) Between Baton Rouge and St. Francisville, LA: from Baton Rouge over U.S. Hwy 61 to junction LA Hwy 10, then over LA Hwy 10 to St. Francisville, LA, and return over the same route; and (3) Between Baton Rouge and LaFayette, LA: over Interstate Hwy 10, serving in connection with the routes (1) to (3) above; all intermediate points and the off-route points of Carville, Garyville, Giesmar, Good Hope, Gramercy, Lutcher, Lions, Mt. Airy, Port Hudson, the plantsite of Georgia Pacific near Port Hudson, Norco, Ponchatoula, and Zee, LA. (Hearing site: New Orleans, LA.)

MC 95540 (Sub-1152F), filed December 27, 1979. Applicant: WATKINS MOTOR LINES, INC., 1144 West Griffin Road, P.O. Box 1636, Lakeland, FL 33802. Representative: Benjy W. Fincher (same address as applicant). Transporting (1) *label stock, paper labels, gummed paper, and corrugated boxes* (except commodities which because of size or weight require the use of special equipment), and (2) *materials, equipment, and supplies* used in the manufacture of the commodities in (1), (except commodities in bulk, and those which because of size or weight require the use of special equipment), between points in the United States (except AK and HI). (Hearing site: Los Angeles, CA or Washington, DC.)

MC 104421 (Sub-33F), filed December 17, 1979. Applicant: ECONOLINES, INC., P.O. Box 623, D.T.S., Omaha, NE 68101. Representative: Roger W. Norris (same address as applicant). Transporting *such commodities* as are dealt in and used by manufacturers and distributors of plumbing and electrical fixtures, supplies, and equipment (except commodities in bulk), between points in Dodge and Washington Counties, NE, on the one hand, and, on the other, points in the United States (except AK, AZ, AR, FL, HI, ID, KY, LA, MS, MT, NV, NM, ND, OK, OR, SD, TN, TX, UT, WA, and WY). (Hearing site: Omaha, NE.)

MC 105501 (Sub-40F), filed December 14, 1979. Applicant: TERMINAL WAREHOUSE COMPANY, a corporation, 1851 Radisson Road N.E., Blaine, MN 55434. Representative: Samuel Rubestein, P.O. Box 5, Minneapolis, MN 55440. Transporting (1) *prestressed* and *precast concrete* (a) from the facilities of Fabcon, Inc., at or near Savage, MN, to points in IL, IN, IA, MI, NE, OH and WI, and (b) from the facilities of Molin Concrete Products Company, at or near Lino Lakes, MN to points in IA, NE and WI, and (2) *materials, equipment* and *supplies* used in the erection of the commodities in (1) from points in IL, IN, IA, MI, NE, OH and WI, to the facilities of Fabcon, Inc. at or near Savage, MN. (Hearing site: Minneapolis or St. Paul, MN.)

MC 105881 (Sub-61F), filed December 18, 1979. Applicant: MR&R TRUCKING COMPANY, a corporation, Box 1000, Staunton, VA 24401. Representative: Francis W. McInerny, Suite 502, 1000 16th St., NW., Washington, DC 20036. Over *regular routes*, transporting *general commodities* (except those of unusual value, household goods as defined by the Commission, classes A and B explosives, commodities in bulk, and those requiring special equipment), serving points in Troup, Bibb, Houston, Baldwin, Jones, Peach, and Monroe Counties, GA, as intermediate or off-route points in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Macon or Atlanta, GA.)

Note.—Applicant intends to tack the sought authority with its other authorities.

MC 106401 (Sub-78F), filed December 13, 1979. Applicant: JOHNSON MOTOR LINES, INC., P.O. Box 31577, Charlotte, NC 28231. Representative: Roger W. Rash (same address as applicant). Transporting (1) *malt beverages*, (except in bulk), from the facilities of Miller Brewing Company at or near Albany, GA, to points in AL, FL, LA, MS, and TN, and (2) *materials, equipment and supplies* used in the manufacture or distribution of malt beverages (except commodities in bulk), in the reverse direction. (Hearing site: Albany or Atlanta, GA.)

MC 107460 (Sub-50F), filed December 29, 1979. Applicant: WILLIAM Z. GETZ, INC., 3055 Yellow Goose Road, P.O. Box 4124, Lancaster, PA 17604. Representative: Christian V. Graf, 407 North Front Street, Harrisburg, PA 17101. *Contract carrier*, transporting (a) *printed matter*, and *materials, supplies* and *equipment* used in the manufacture of printed matter (except commodities in bulk), (1) between the facilities of R.R. Donnelley & Sons Company at or near (a) Old Saybrook, CT, (b) Mattoon, Dwight, and Chicago, IL, (c) Crawfordsville and Warsaw, IN, (d) Glasgow, KY, (e) Willard, OH, (f) Spartanburg, SC, (g) Gallatin, TN, and (h) Harrisonburg, VA; (2) between the facilities of R.R. Donnelley & Sons Company at or near Lancaster, PA, on the one hand, and, on the other, the facilities of R.R. Donnelley & Sons Company at or near (a) Spartanburg, SC, (b) Harrisonburg, VA; and (3) from the facilities of R.R. Donnelley & Sons Company at or near (a) Spartanburg, SC, (b) Harrisonburg, VA, (c) Glasgow, KY, and (d) Gallatin, TN, to points in the United States (except AK and HI) and (b) *materials, supplies*, and *equipment* used in the manufacture of printed matter (except commodities in bulk), from points in AL, IL, ME, MD, MI, MN, NY, NC, and WI to the facilities of R.R. Donnelley & Sons Company at Lancester, PA, under a continuing contract(s) with R.R. Donnelly & Sons Company of Chicago, IL. (Hearing site: Washington DC, or Harrisburg, PA.)

MC 107960 (Sub-8F), filed December 19, 1979. Applicant: SUMMERFORD TRUCK LINE, INC., 206 Broadway, Ashford, AL 36312. Representative: Robert J. Corber, 1747 Pennsylvania Ave., N.W., Suite 1050, Washington, DC. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Charleston, SC, Savannah, GA, Jacksonville and Panama City, FL, on the one hand, and, on the other, points in AL, FL, GA, MS, SC, and TN, restricted to traffic having a prior or subsequent movement by water. (Hearing site: Jacksonville, FL, or Savannah, GA.)

MC 110191 (Sub-37F), filed December 10, 1979. Applicant: TURNER'S EXPRESS INCORPORATED, 1300 Shelton Avenue, Norfolk, VA 23502. Representative: D. L. Turner (same address as applicant). Transporting *non-*

alcoholic beverages, in containers, from Norfolk and Richmond, VA, to points in NC. (Hearing site: Norfolk, VA.)

MC 110420 (Sub-846F), filed December 19, 1979. Applicant: QUALITY CARRIERS, INC., 100 Waukegan Road, P.O. Box 1000, Lake Bluff, IL 60044. Representative: John R. Sims, Jr., 915 Pennsylvania Building, 425 13th Street NW., Washington, DC 20004. Transporting *vegetable oils and by-products* of vegetable oils between the facilities of Cargill, Inc., at or near Riverside, ND, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Minneapolis, MN or Washington, DC.)

MC 111201 (Sub-48F), filed December 19, 1979. Applicant: J. N. ZELLNER & SON TRANSFER COMPANY, P.O. Box 91247, East Point, GA 30364. Representative: Archie B. Culbreth, Suite 202, 2200 Century Parkway, Atlanta, GA 30345. Transporting (1) *metal containers, container ends, closures, and tin plate* and (2) *materials, equipment and supplies,* used in the manufacture or distribution of two commodities in (1) above, (except commodities in bulk), between the facilities of Crown Cork and Seal Company, Inc., at or near Atlanta, GA, on the one hand, and, on the other, points in VA. (Hearing site: Atlanta, GA.)

MC 111401 (Sub-596F), filed December 21, 1979. Applicant: GROENDYKE TRANSPORT, INC., P.O. Box 632, 2510 Rock Island Boulevard, Enid, OK 73701. Representative: Victor R. Comstock (same address as applicant). Transporting *tallow,* in bulk, in tank vehicles, from the facilities of Iowa Beef Processors, Inc., at or near Holcomb, KS, to points in AR, LA, NM, OK and TX. (Hearing site: Omaha, NE or Sioux City, IA.)

MC 11611 (Sub-45F), filed December 10, 1979. Applicant: NOERR MOTOR FREIGHT, INC., 203 Washington Ave., Lewistown, PA 17044. Representative: William D. Taylor, 100 Pine St., Suite 2550, San Francisco, CA 94111. Transporting *swimming pool products,* from the facilities of Sun Swimpool Products, a Division of FMC Corporation, at or near Livonia, MI, to points in CA, AZ, WA, and UT. (Hearing site: San Francisco, CA.)

MC 112750 (Sub-355F), filed December 28, 1979. Applicant: PUROLATOR COURIER CORP., 3333 New Hyde Park Rd., New Hyde Park, NY 11042. Representative: Elizabeth L. Henoch (same address as applicant). *Contract carrier* transporting *commercial papers, documents, and written instruments* as are used in the business of banks and banking institutions, (except currency and negotiable securities) (1) between Evansville, IN, and Paducah, KY, on the one hand, and, on the other, points in Alexander, Clay, Clinton, Effingham, Franklin, Hardin, Jackson, Jefferson, Johnson, Lawrence, Massac, Perry, Pope, Pulaski, Union and Williamson Counties, IL, (2) between Puducah, KY, on the one hand, and, on the the other, points in Crawford, Edwards, Gallatin, Hamilton, Jasper, Marion, Richland, Saline, Wabash, Wayne, and White Counties, IL, and (3) between Evansville, IN, on the one hand, and, on the other, points in Chreistian, Hancock, Muhlenberg, and Ohio Counties, KY, under continuing contract(s) in (1) to (3) above, with banks and banking institutions. (Hearing site: Paducah, KY, or Indianapolis, IN.)

MC 113651 (Sub-323F), filed December 17, 1979. Applicant: INDIANA REFRIGERATOR LINES, INC., P.O. Box 552, Riggin Road, Muncie, IN 47305. Representative: Henry Higgs (same address as applicant). Transporting *foodstuffs* (except in bulk), from the facilities of Beatrice Foods Company at or near Archbold and Napoleon, OH, to points in AL, FL, GA, MS, NC, SC, and TN, restricted to the transportation of traffic originating at the above named origins. (Hearing site: Columbus, OH, or Washington, DC.)

MC 113651 (Sub-325F), filed December 20, 1979. Applicant: INDIANA REFRIGERATOR LINES, INC., P.O. Box 552, Riggin Rd., Muncie, IN 47305. Representative: Henry Higgs (same address as applicant). Transporting *meats, meat products, and meat byproducts, and articles distributed by meat-packing houses,* as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the facilities used by John Morrell & Co., at or near (a) Montgomery, AL and (b) Shreveport, LA, to points in AL, CT, DE, FL, GA, IL, IN, KY, ME, MD, MA, MI, MS, MO, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VA, WV, and DC, restricted to the transportation of traffic originating at the named facilities. (Hearing site: Chicago, IL, or Washington, DC.)

MC 113981 (Sub-14F), filed December 10, 1979. Applicant: VEGAS TRUCKING CO., a corporation, 2853 Cedar Street, Las Vegas, NV 89104. Representative: Donald E. Fernaays, 4040 East McDowell Road, Suite 320, Phoenix, AZ 85008. Over regular routes, transporting *general commodities,* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, petroleum products in bulk, and commodities requiring special equipment), between Los Angeles, CA and Las Vegas, NV, serving all intermediate points in NV, the off-route points in California within the Los Angeles Basin Territory as described below and the off-route points in Nye County Nevada within the territory described below, from Los Angeles, over Interstate Hwy 10 to junction Interstate Hwy 15, then over Interstate Hwy 15 to Baker, CA, then over CA Hwy 127 to Shoshone, CA, then CA Hwy 178 to the CA–NV state line, then over NV Hwy 52 to Pahrump, NV, then over NV Hwy 16 to junction Interstate Hwy 15 then over Interstate Hwy 15 to Las Vegas, NV, and return over the same route, serving all intermediate points in NV, and serving all off-route points in Los Angeles, San Bernardino, Riverside and Orange Counties, CA, and Nye and Clark Counties, NV. (Hearing site: Los Angeles, NV.)

MC 114211 (Sub-429F), filed December 11, 1979. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, IA 50704. Representative: Adelor J. Warren (same address as applicant). Transporting *such commodities* as are dealt in or used by manufacturers, dealers, and distributors of (a) agricultural and industrial equipment and (b) lawn and leisure products, between points in CT, DE, ME, MD, MA, NH, NJ, NY, PA, RI, VT, VA, WV, and DC, on the one hand, and, on the other, points in the United States (except AK and HI), restricted to the transportation of traffic originating at or destined to the facilities of J. S. Woodhouse & Sons, Inc., and its dealers. (Hearing site: Springfield, MA, or Hartford, CT.)

MC 114211 (Sub-430F), filed December 13, 1979. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, IA 50704. Representative: Kurt E. Vragel, Jr. (same address as applicant). Transporting *such commodities* as are dealt in or used by manufacturers, dealers, and distributors of steel buildings, between points in the United States (except AK or HI), restricted to the transportation of traffic originating at or destined to the facilities of Mesco Metal Buildings Corp., Subsidiary of Anderson Industries, and its dealers and distributors. (Hearing site: Dallas or Fort Worth, TX.)

MC 114211 (Sub-431F), filed December 13, 1979. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, IA 50704. Representative: Kurt E. Vragel, Jr. (same address as applicant). Transporting *general commodities* (except those of unusual

value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment) between points in the United States (except AK and HI), restricted to the transportation of traffic originating at or destined to the facilities of Waterloo Industries, Inc., Lumidor Industries, and their distributors and dealers. (Hearing site: Waterloo, IA.)

MC 115311 (Sub-383F), filed December 13, 1979. Applicant: J & M TRANSPORTATION CO., INC., P.O. Box 488, Milledgeville, GA 31061. Representative: Robert E. Tate, P.O. Box 517, Evergreen, AL 36401. Transporting (1) *anti-freeze, windshield washer solvent* (except commodities in bulk, in tank vehicles), and containers, from points in Montgomery County, AL, to those points in the United States in and east of ND, SD, NE, KS, OK, and TX; and (2) *materials, supplies* and *equipment* used in the manufacture and distribution of the commodities named in (1) above (except commodities in bulk, in tank vehicles), in the reverse direction. (Hearing site: Montgomery, AL or Birmingham, AL.)

MC 115311 (Sub-386F), filed December 13, 1979. Applicant: J & M TANK LINES, INC., P.O. Box 544, Americus, GA 31709. Representative: Kim G. Meyer, P.O. Box 56387, Atlanta, GA 30343. Transporting *cement,* from the facilities of General Portland, Inc., Signal Mountain Division, at Chattanooga, TN, to points in GA, AL, MS, KY, VA, NC, SC, and TN. (Hearing site: Atlanta, GA.)

MC 115931 (Sub-103F), filed December 13, 1979. Applicant: BEE LINE TRANSPORTATION, INC., P.O. Box 3987, Missoula, MT 59801. Representative: Gene P. Johnson, P.O. Box 2471, Fargo, ND 58108. Transporting *iron and steel articles,* from the facilities of Northwestern Steel and Wire Co., at or near Sterling and Rock Falls, IL, to points in ID, MN, MT, ND, OR, SD, WA, and WY. (Hearing site: Chicago, IL.)

MC 117851 (Sub-31F), filed October 24, 1979. Applicant: JOHN CHEESEMAN TRUCKING, INC., 501 North First St., Fort Recover, OH 45846. Representative: Earl N. Merwin, 85 East Gay St., Columbus, OH 43215. *Contract carrier* transporting *plumbing goods,* between Evansville and Rockport, IN, on the one hand, and, on the other, points in CT, DE, ME, MD, MA, MI, NH, NJ, NY, OH, PA, RI, VT, WV, and DC, under continuing contract(s) with Peerless Pottery, Inc., of Evansville, IN. (Hearing site: Columbus, OH.)

MC 117940 (Sub-361F), filed December 26, 1979. Applicant: NATIONWIDE CARRIERS, INC., P.O. Box 104, Maple Plain, MN 55359. Representative: Allan L. Timmerman, 5300 Highway 12, Maple Plain, MN 55359. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in the United States (except AK and HI) restricted to the transportation of traffic originating at or destined to the facilities of Dayton Hudson Corporation. (Hearing site: Minneapolis-St. Paul, MN.)

MC 118431 (Sub-33F), filed December 14, 1979. Applicant: DENVER SOUTHWEST EXPRESS, INC., P.O. Box 9799, Little Rock, AR 72209. Representative: Scott E. Daniel, 800 Nebraska Savings Building, 1623 Farnam Street, Omaha, NE 68102. *Contract carrier,* transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between the facilities of SCM Corporation, at or near (a) Colonel's Island and Flowery Branch, GA, (b) Durham, NC, and (c) El Paso, TX, on the one hand, and, on the other, points in the United States (except AK and HI), under continuing contract(s) with SCM Corporation, of Cleveland, OH. (Hearing site: Cleveland, OH, or Little Rock, AR.)

MC 119641 (Sub-181F), filed December 18, 1979. Applicant: RINGLE EXPRESS, INC., 450 East Ninth Street, Fowler, IN 47944. Representative: Norman R. Garvin, Scopelitis & Garvin, 1301 Merchants Plaza, Indianapolis, IN 46204. Transporting (1) *composition board, and insulating materials,* and (2) *accessories* used in the application and installation of the commodities in (1) above, from the facilities of Gold Bond Building Products, at or near Mobile, AL, to points in IL, IN, OH, MI, WI, MN, IA, and MO. (Hearing site: Indianapolis, IN, or Chicago, IL.)

MC 119741 (Sub-249F), filed December 16, 1979. Applicant: GREEN FIELD TRANSPORT COMPANY, INC., 1515 Third Ave. NW., P.O. Box 1235, Fort Dodge, IA 50501. Representative: D. L. Robson (same address as applicant). Transporting *frozen foods,* between those points in the United States on and east of a line beginning at the mouth of the Mississippi River, and extending along the Mississippi River to its junction with the western boundary of Itasca County, MN, then northward along the western boundaries of Itasca and Koochiching Counties, MN, to the international boundary line between the United States and Canada. (Hearing site: Louisville, KY.)

MC 119741 (Sub-250F), filed December 20, 1979. Applicant: GREEN FIELD TRANSPORT COMPANY, INC., 1515 Third Ave. NW., P.O. Box 1235, Fort Dodge, IA 50501. Representative: D. L. Robson P.O. Box 1235, Ft. Dodge, IA 50501. Transporting (1) *household cleaning products, water purifying compounds,* and *dry acids* and (2) *materials, equipment, and supplies* used in the manufacture, and distribution of commodities named in (1) above (except commodities in bulk), from the facilities of Hi-Lex, Division of Purex Industries, at or near Eagan and St. Paul, MN, to points in IA, ND, SD, and WI. (Hearing site: St. Paul, MN.)

MC 124141 (Sub-30F), filed October 26, 1979. Applicant: JULIAN MARTIN, INC., P.O. Box 3348, Batesville, AR 72501. Representative: Theodore Polydoroff, Suite 301, 1307 Dolley Madison Blvd., McLean, VA 22101. Transporting *such commodities* as are dealt in by retail and department stores, (except commodities in bulk), from points in AL, AR, CA, CT, DE, FL, GA, IL, IN, IA, KY, LA, MD, MA, MI, MN, MS, MO, NJ, NY, NC, OH, PA, RI, SC, TX, VA, WV, and DC, to points in AL, AR, IL, KS, KY, LA, MS, MO, OK, TN, and TX. (Hearing site: Little Rock, AR, or Washington, DC.)

Note.—Dual operations may be involved.

MC 124170 (Sub-146F), filed December 17, 1979. Applicant: FROSTWAYS, INC., 3000 Chrysler Service Drive, Detroit, MI 48207. Representative: William J. Boyd, 2021 Midwest Road, Suite 205, Oak Brook, IL 60521. Transporting *alcoholic beverages* (except in bulk), from Boston, MA to points in AZ, CA, CO, MI, MN, NE, NM, NV, SD, TX, UT, and WI. (Hearing site: Boston, MA or Washington, DC.)

MC 124711 (Sub-102F), filed December 14, 1979. Applicant: BECKER CORPORATION, P.O. Box 1050, El Dorado, KS 67042. Representative: Rod Parker (same address as applicant). Transporting *tallow,* in bulk, from the facilities of Iowa Beef Processors, Inc., at or near Holcomb, KS, to points in TX, LA, OK, AR, NM, MO, IA, MN, CO, AZ, WY, and NE. (Hearing site: Omaha, NE or Sioux City, IA.)

MC 124821 (Sub-62F), filed September 10, 1979, and previously noticed in Federal Register issue of March 5, 1980. Applicant: GILCHRIST TRUCKING, INC., 105 North Keyser Ave., Old Forge, PA 18518. Representative: John W. Frame, Box 626, 2207 Old Gettysburg Road, Camp Hill, PA 17011. Transporting (1) *building board, wall board, and insulating board,* and (2) *accessories*

used in the installation of the commodities in (1) above, from the facilities of Celotex Corporation, at or near Pittston, PA, to points in FL, GA, KS, LA, MI, TX, WI, OH, IN, and IL. (Hearing site: Harrisburg, PA.)

Note.—This republication includes wall board and shows FL, GA, KS, LA, MI, TX, and WI, as destination States.

MC 124821 (Sub-74F), filed December 17, 1979. Applicant: GILCHRIST TRUCKING, INC., 105 North Keyser Avenue, Old Forge, PA 18518. Representative: John W. Frame, Box 626, 2207 Old Gettysburg Road, Camp Hill, PA 17011. Transporting *canned goods,* from the facilities of Duffy-Mott Co., Inc. at Hamlin, Holley, and Williamson, NY, to points in IL, IN, OH, PA, FL, GA, NC, and SC. (Hearing site: Harrisburg, PA.)

MC 124821 (Sub-75F), filed December 20, 1979. Applicant: GILCHRIST TRUCKING, INC., 105 North Keyser Avenue, Old Forge, PA 18518. Representative: John W. Frame, Box 626, 2207 Old Gettysburg Road, Camp Hill, PA 17011. Transporting (1) *television sets, radios, phonographs, stereo systems, recorders, players, speaker systems, and audio equipment,* and (2) *accessories and parts* for the commodities in (1) above, from Bloomington and Indianapolis, IN, to points in NY, NJ, PA, and ME. (Hearing site: Harrisburg, PA.)

MC 125470 (Sub-27F), filed December 17, 1979. Applicant: MERCURY TANKLINES LIMITED, P.O. Box 3500, Calgary, Alberta Canada T2P 2P9. Representative: Ray F. Koby, P.O. Box 2567, Great Falls, MT 59403. *Contract carrier,* in foreign commerce only, transporting *beverages,* in bulk, in tank vehicles, from ports of entry on the international boundary line between the United States and Canada located in MI, to St. Louis, MO, under continuing contract(s) with Melchers, Inc., of Berthierville, P.Q. Canada. (Hearing site: Detroit, MI.)

MC 127840 (Sub-153F), filed December 17, 1979. Applicant: MONTGOMERY TANK LINES, INC., 17550 Fritz Drive, Lansing, IL 60438. Representative: William H. Towle, 180 North LaSalle Street, Chicago, IL 60601. Transporting *plastic pellets,* in bulk, in tank vehicles, from Denver, CO, to Powell, WY. (Hearing site: Denver, CO or Houston, TX.)

MC 127840 (Sub-154F), filed December 20, 1979. Applicant: MONTGOMERY TANK LINES, INC., 17550 Fritz Drive, Lansing, IL 60438. Representative: William H. Towle, 180 North LaSalle Street, Chicago, IL 60601. Transporting *petrochemicals,* in bulk, in tank from the facilities of Amoco Chemicals Corporation at Texas City, TX, to points in IL, IN, IA, MN, WI, OH, and PA. (Hearing site: Chicago, IL, or Houston, TX.)

MC 127841 (Sub-1F), filed December 13, 1979. Applicant: O'FALLON GAS CO. of St. Charles County, a corporation, 618 Woodlawn Avenue, O'Fallon, MO 63366. Representative: Edward F. Pietrowski, 1302 Ambassador Bldg., St. Louis, MO 63101. *Contract carrier* transporting *liquified petroleum gas,* from East St. Louis, IL, and points in Madison County, IL, to the facilities of Montgomery County Gas, Inc., in Montgomery County, MO, under continuing contract(s) with Montgomery County Gas, Inc., of St. Charles, MO. Condition: The permit issued in this proceeding shall be limited in point of time to a period expiring 5 years from its date of issue. (Hearing site: St. Louis, or Jefferson City, MO.)

MC 128030 (Sub-124F), filed July 9, 1979. Applicant: THE STOUT TRUCKING CO., INC., P.O. box 177, Urbana, IL 61801. Representative: James R. Madler, 120 W. Madison St., Chicago, IL 60602. Transporting *malt beverages,* in containers, (1) from Milwaukee and LaCrosse, WI, to Effingham, IL, (2) from Milwaukee, WI, to Olney, IL, (3) from Ft. Wayne, IN, to Herrin, IL, (4) from Milwaukee and LaCrosse, WI, and St. Paul, MN, to Carbondale, IL, (5) from Ft. Wayne, IN, and LaCrosse, WI, to Harrisburg, IL, (6) from St. Louis, MO, to Danville, IL, (7) from Newport, KY, to Paris, IL, (8) from Milwaukee, WI and Newport, KY, to Springfield, IL, (9) from Milwaukee, WI, to Eldorado, IL, (10) from Milwaukee, WI, to Taylor Springs, IL, (11) from Detroit, MI, Milwaukee, WI, and Ft. Wayne, IN, to Granite City, Centralia, and Mt. Vernon, IL, (12) from Ft. Wayne, IN, Milwaukee, WI, and Newport, KY, to Taylorville, IL, and (13) from Ft. Wayne, IN, St. Paul, MN, Louisville, KY, and Cincinnati, OH, to Mattoon, IL. (Hearing site: Chicago, IL.)

MC 129301 (Sub-18F), filed December 17, 1979. Applicant: ENGLISH & SONS CORP., 412 Kingshighway, Thorofare, NJ 08086. Representative: James H. Sweeney, 468 Kentucky Avenue, R.D. 5, Williamstown, NJ 08094. *Contract carrier,* transporting *such commodities* as are dealt in or used by grocery and food business houses, from points in NJ, NY, PA, and DE, to points in MD, VA, and DC under continuing contract(s) with Giant Food, Inc., of Landover, MD. (Hearing site: Philadelphia PA, or Washington, DC.)

MC 133621 (Sub-3F), filed December 13, 1979. Applicant: FRONTIER TRANSPORTATION CO., a corporation, 608 West Forth Street, P.O. Box 1654, Anchorage, AK 99510. Representative: J. Max Harding, P.O. Box 82028, Lincoln, NE 68501. Transporting *equipment, materials, and supplies* used in or in connection with the discovery, development, production, refining, manufacturing, processing, storage, transmission, and distribution of natural gas and petroleum and their products and their byproducts, and *materials, equipment, and supplies* used in or in connection with the construction, operation, repair, serving, maintenance, and dismantling of pipelines including the stringing and picking up thereof, between Sweetgrass, MT, on the one hand, and, on the other, points in AK. (Hearing site: Anchorage, AK.)

MC 134501 (Sub-75F), filed December 20, 1979. Applicant: INCORPORATED CARRIERS, LTD., P.O. Box 3128, Irving, TX 75061. Representative: T. M. Brown, P.O. Box 1540, Edmond, OK 73034. Transporting *refrigerated display cases,* from Bakersfield, CA, to points in the United States (except AK and HI). (Hearing site: Los Angeles, CA; Dallas, TX; or Washington, DC.)

MC 134970 (Sub-29F), filed December 20, 1979. Applicant: UNZICKER TRUCKING, INC., P.O. Box 35, El Paso, IL 61738. Representative: Michael J. Ogborn, P.O. Box 82028, Lincoln, NE 68501. Transporting (1) *meats, meat products and meat by-products, and articles distributed by meat-packing houses* as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766 (except hides and commodities in bulk) and (2) *foodstuffs,* in mixed loads with the commodities named in (1) above, from Davenport, IA, to points in AL. (Hearing site: Chicago, IL.)

MC 135070 (Sub-130F), filed December 13, 1979. Applicant: JAY LINES, INC., P.O. Box 30180, Amarillo, TX 79120. Representative: Gailyn L. Larsen, P.O. Box 82816, Lincoln, NE 68501. Transporting *medical, surgical, and hospital supplies, wiping pads, dry goods, animal health products, industrial tapes, pipe covering, and rust preventative pipe coating* (except commodities in bulk), between points in CT, GA, KY, MA, and SC, on the one hand, and, on the other, points in AL, CA, CO, IL, IN, IA, KS, LA, MN, MS, MO, OK, OR, TX, WA, and WI, restricted to the transportation of traffic originating at or destined to the facilities of the Kendall Company. (Hearing site: Boston, MA, or Dallas, TX.)

Note.—Dual operations may be involved.

MC 135070 (Sub-138F), filed December 20, 1979. Applicant: JAY LINES, INC., P.O. Box 30180, Amarillo, TX 79120.

Representative: Gailyn L. Larsen, P.O. Box 82816, Lincoln, NE 68501. Transporting (a) *appliances* and *air conditioners,* and (b) *parts* and *accessories* for the commodities in (a) above, the facilities of Gulf Atlantic Distribution Services, at or near Memphis, TN, to points in AZ, NM, OK; and TX. (Hearing site: Houston or Dallas, TX.)

Note.—Dual operations may be involved.

MC 135170 (Sub-46F), filed December 18, 1979. Applicant: TRI-STATE ASSOCIATES, INC., P.O. Box 188, Federalsburg, MD 21632. Representative: James C. Hardman, 33 N. LaSalle St., Chicago, IL 60602. *Contract carrier,* transporting *such commodities* as are dealt in or used by manufacturers of plastic and chemical products (except commodities in bulk, and those which because of size or weight require the use of special equipment), between those points in the United States in and east of MN, IA, MO, AR, and LA, restricted to the transportation of traffic originating at or destined to the facilities of Amoco Chemicals Corporation, under continuing contract(s) with Amoco Chemicals Corporation, of Chicago, IL. (Hearing site: Chicago, IL, or Washington, DC.)

MC 135231 (Sub-40F), filed December 14, 1979. Applicant: NORTH STAR TRANSPORT, INC., Rt. 1 Highway 1 and 59 West, Thief River Falls, MN 56701. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. Transporting (1) *vegetable meal and vegetable meal by-products,* and (2) *materials, supplies* and *equipment* used in the manufacture and distribution of the commodities named in (1) above, between the facilities of Cargill, at or near Riverside, ND, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: St. Paul, MN.)

MC 135811 (Sub-17F), filed December 20, 1979. Applicant: GARDNER TRUCKING CO., INC., P.O. Drawer 493, Walterboro, SC 29488. Representative: Steven W. Gardner (same address as applicant). *Contract carrier,* transporting (1) *welders, welding products, parts* for welders and welding products, *alloys, chemical compounds,* and *gaseous compounds,* and (2) *materials and supplies* used in the manufacture of welding products, between points in the United States (except AK and HI), under continuing contract(s) with The Jimmie Jones Company, of Tulsa, OK. (Hearing site: Dallas, TX, or Washington, DC.)

MC 136511 (Sub-95F), filed December 7, 1979. Applicant: VIRGINIA APPALACHIAN LUMBER CORPORATION, 9640 Timberlake Road, Lynchburg, VA 23502. Representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 Eleventh Street, N.W., Washington, D.C. 20001. Transporting *foodstuffs* (except in bulk), from the facilities of Swiss Chalet Food Products, at or near Wichita, KS, to Fredericksburg, VA, Atlanta, GA, and Orlando, FL. (Hearing site: Washington, DC.)

MC 136771 (Sub-6F), filed December 28, 1979. Applicant: HY-WAY TRANSIT, INC., Route #1, Cedar Grove, WI 53013. Representative: Richard A. Westley, 4506 Regent St., Suite 100, Madison, WI 53705. *Contract carrier,* transporting *computer paper,* from Clifton, NJ, to points in IL, IN, MI, MN, NY, OH, PA and WI, under continuing contract(s) with Automatic Data Processing, Clifton, NJ. (Hearing site: Chicago, IL.)

MC 138941 (Sub-34F), filed June 18, 1979. Applicant: COUNTRY WIDE TRUCK SERVICE, INC., 1110 South Reservoir St., Pomona, CA 91766. Representative: Paul M. Daniell, P.O. Box 56387, Atlanta, GA 30343. *Contract carrier,* transporting (1) *stands* (except furniture stands), from Corry, PA, to Los Angeles and San Francisco, CA, Chicago, IL, DAllas, TX, and Oklahoma City, OK, and (2) *plastic powder* (except in bulk), *chilled shot, and machine parts,* from Oklahoma City, OK, to Los Angeles and San Francisco, CA, under continuing contract(s) in (1) and (2) above with Xerox Corporation, of Webster, NY. (Hearing site: Buffalo, NY, or Los Angeles, CA.)

MC 138960 (Sub-12F), filed: December 20, 1979. Applicant: ROKO EXPRESS, INC., 819 West Fifth Avenue, Columbus, OH 43212. Representative: H. Barney Firestone, 10 South La Salle Street, Suite 1600, Chicago, IL 60603. Transporting *foodstuffs,* from the facilities or Bruce Foods Corporation at Cade and Lozes, LA, to points in IL, IN, KY, the Lower Peninsula of MI, OH, TN, and WI. Condition: The person or persons who appear to be in common control of applicant and another regulated carrier must either file an application for approval of common control under 49 U.S.C. 11343, or submit an affidavit indicating why such approval is unnecessary. (Hearing site: New Orleans, LA or Chicago, IL.)

MC 139461 (Sub-2F), filed: December 13, 1979. Applicant: FOREST TRANSPORTATION COMPANY, a corporation, Route 1, Box 15H, Atascosa, TX 78002. Representative: M. Ward Bailey, 2412 Continental Life Bldg. Fort Worth, TX 76102. Transporting *potable water,* in bulk, in tank vehicles, from points in Garland, Polk, and Montgomery Counties, AR, to points in KA, OK, LA, and TX. (Hearing site: Little Rock or Fort Smith, AR.)

MC 140421 (Sub-21F), filed April 3, 1979. Applicant: ACTION MOTOR EXPRESS, INC., 8307 Almonaster Ave., P.O. Box 29102, New Orleans, LA 70189. Representative: Sandra H. Roberson (same address as applicant). *Contract carrier,* transporting (1) *paper, paper products, containers, container ends,* and (2) *components, materials and supplies* used in the manufacture of the commodities in (1) above, (except commodities in bulk), between the facilities of American Can Company, Inc., at points in AL, AR, LA, MS, TN, KY, TX, IL, IN, MO, OH, MI, GA, SC, NC, VA, WV, and FL, under continuing contract(s) with American Can Company, Inc., of Oak Brook, IL. (Hearing site: New Orleans or Baton Rouge, LA.)

MC 140800 (Sub-5F), filed December 14, 1979. Applicant: COLONIAL TRANSPORTATION, INC., P.O. Box 448, McMinnville, TN 37110. Representative: Robert L. Baker, 618 United American Bank Bldg., Nashville, TN 37219. *Contract carrier* transporting *such commodities* as are dealt in or used by distributors of automotive and electrical products (except commodities in bulk), between points in the United States (except AK and HI), under continuing contract(s) with Gould, Inc., of Rolling Meadows, IL. (Hearing site: Chicago, IL or Washington, DC.)

MC 142370 (Sub-5F), filed December 20, 1970. Applicant: PAUL LONDINO, d.b.a., SCRANTON TRANSFER, 500 North 3rd Street, Fort Smith, AR 72901. Representative: Don A. Smith, P.O. Box 43, 510 North Greenwood, Fort Smith, AR 72902. Over regular routes, transporting: *general commodities* (except those of unusual value), classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, between Morrison's Bluff and Fort Smith, AR: from Morrison's Bluff over AR Hwy 109 to Midway, AR, then over AR Hwy 22 to Fort Smith, and return over the same route, seving all intermediate points. (Hearing site: Fort Smith, AR.)

Note.—Applicant intends to tack the authority sought with existing authority.

MC 143331 (Sub-14F), filed December 14, 1979. Applicant: FREIGHT TRAIN TRUCKING, INC., 4906 E. Compton Blvd., P.O. Box 817, Paramount, CA 90723. Representative: William J. Monheim, P.O. Box 1756, Whittier, CA 90609. *Contract carrier,* transporting *charcoal, charcoal briquettes, wood chips, compressed sawdust fireplace*

logs, lighter fluid, and barbecue supplies, from White City, OR, to points in CA, under continuing contract(s) with Husky Industries, Inc., of Atlanta, GA. (Hearing site: Los Angeles, CA.)

MC 144761 (Sub-5F), filed December 18, 1979. Applicant: R. B. (PARKER) GOODLOE, d.b.a. GOODLOE TRUCKING COMPANY, Route 10, Box 89 A S, Lubbock, TX. Representative: Richard Hubbert, P.O. Box 10236, Lubbock, TX 79408. Transporting *tallow* in bulk, from the facilities of Iowa Beef Processors, Inc., at or near Holcomb, KS, to points in TX, LA, OK, and CO. (Hearing site: Omaha, NE, or Sioux City, IA.)

MC 144810 (Sub-5F), filed December 18, 1979. Applicant: FLOYD M. CROSS, 62911 Lopez Street, Espanola, NM 87532. Representative: Roger V. Eaton, P.O. Drawer 965, Albuquerque, NM 87108. *Contract carrier* transporting *plastic containers,* and *materials* and *supplies* used in the production and marketing of plastic containers, between Denver, CO and points in NM and AZ, under continuing contract(s) with Hoover Universal, Inc., of Denver, CO. (Hearing site: Albuquerque, NM, or Denver, CO.)

MC 144910 (Sub-11F), filed December 12, 1979. Applicant: TYREE D. PRUITT, d.b.a. TY PRUITT TRUCKING, 811 Landay Avenue, Baltimore, MD 21237. Representative: Chester A. Zyblut, 366 Executive Bldg., 1030 Fifteenth Street, N.W., Washington, DC 20005. Transporting *fruit juice,* in containers, between Findlay, OH, and Mount Dora, FL, on the one hand, and, on the other, points in AL, FL, GA, MA, MD, NJ, NC, NY, SC, PA, and VA. (Hearing site: Orlando, FL and Washington, DC.)

MC 145301 (Sub-5F), filed December 18, 1979. Applicant: R.E.M. TRANSPORT CO., INC., Building No. 431, Raritan Center, Edison, NJ 08817. Representative: Brian S. Stern, 2425 Wilson Blvd., Suite 367, Arlington, VA 22201. Transporting *chemicals, petroleum products, and plastic materials* (except commodities in bulk), from Wood River, IL, and Texas City and Chocolate Bayou, TX, to points in AL, AR, FL, GA, KS, LA, MO, NC, OK, SC, TN, and TX. (Hearing site: Chicago, IL, or Washington, DC.)

MC 145441 (Sub-86F), filed December 17, 1979. Applicant: A.C.B. TRUCKING, INC., P.O. Box 5130, No. Little Rock, AR 72119. Representative: Ralph E. Bradbury (same address as applicant). Transporting *foodstuffs* (except in bulk), from Watsonville, CA, to points in KS, OK, MO, IL, IN, MI, OH, PA, NY, and TN. (Hearing site: Little Rock, AR or Los Angeles, CA.)

Note.—Dual operations may be involved.

MC 145441 (Sub-92F), filed December 28, 1979. Applicant: ACB TRUCKING, INC., P.O. Box 5130, No. Little Rock, AR 72119. Representative: Ralph E. Bradbury (same address as applicant). Transporting *foodstuffs,* (except commodities in bulk), from those points in NY on and west of Interstate Hwy 81 to points in AR, AZ, CA, ID, GA, OR, WA, KS, FL, OK, and TX. (Hearing site: Little Rock, AR or New York, NY.)

Note:—Dual operations may be involved.

MC 145560 (Sub-12F), filed December 19, 1979. Applicant: NORTH ALABAMA TRANSPORTATION, INC., Post Office Box 38, Ider, AL 35981. Representative: William P. Jackson, Jr., 3426 N. Washington Boulevard, Post Office Box 1240, Arlington, VA 22210. *Contract carrier,* transporting *carpet,* from the facilities of Shaw Industries, Inc., at or near Dalton, GA, and the facilities of Philadelphia Carpet Company, at or near Cartersville, GA, to points in TX, NM, UT, AZ, NV, CA, OR and WA, under continuing contract(s) with Shaw Industries, Inc., of Dalton, GA. (Hearing site: Birmingham, AL, or Washington, DC.)

MC 145920 (Sub-2F), filed December 14, 1979. Applicant: S.P. CHAISSON TRANSPORT LIMITED, P.O. Box 210, Lameque, N.B. Canada EOB 1VO. Representative: Roger Noel (same address as applicant). *Contract carrier,* in foreign commerce only, transporting *peat moss pots* and *peat moss pellets,* from the ports of entry on the international boundary line between the United States and Canada at Houston, ME to points in CT, DE, GA, IL, ME, MD, MA, MI, NH, NJ, NY, NC, OH, PA, RI, SC, VT, and VA, under continuing contract(s) with Jiffy Products (N.B.) Ltd., of Shippegan, New Brunswick, Canada. (Hearing site: Portland, OR.)

MC 145990 (Sub-2F), filed December 11, 1979. Applicant: LAWRENCEBURG TRUCKING, INC., 21 Catalpa Avenue, Lawrenceburg, IN 47025. Representative: John R. Bagileo, 918 - 16th Street, N.W., Washington, DC 20006. Transporting *alcoholic beverages* (except in bulk), from Lawrenceburg, IN, to Waukegan, IL. (Hearing site: Cincinnati, OH, or Chicago, IL.)

MC 146451 (Sub-15F), filed December 19, 1979. Applicant: WHATLEY-WHITE, INC., 230 Ross Clark Circule, N.E., Dothan, AL 36302. Representative: R. S. Richard, P.O. Box 2069, Montgomery, AL 36103. Transporting (1) *steel doors, mirrors, iron and steel molding, hardware, bars, garment hangers, and door frames,* and (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities named in (1) above, between the facilities of Slimfold Manufacturing Co., Inc., at or near Dothan, AL, on the one hand, and, on the other, points in the United States (except AL, AK, and HI). (Hearing site: Montgomery or Dothan, AL.)

MC 146451 (Sub-16F), filed December 19, 1979. Applicant: WHATLEY-WHITE, INC., 230 Ross Clark Circule, N.E., Dothan, AL 36302. Representative: R. S. Richard, P.O. Box 2069, Montgomery, AL 36103. Transporting (1)(a) *new furniture, cycles, outdoor play equipment, toys, and juvenile care products,* and (b) *parts and accessories* for the commodities named in (1)(a) above, and (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities named in (1) above, between the facilities of Hedstrom Company, at or near Dothan, AL, on the one hand, and, on the other, points in the United States (except AL, AK, and HI). (Hearing site: Montgomery or Dothan, AL.)

MC 146761 (Sub-2F), filed December 10, 1979. Applicant: P. J. TRUCKING, INC., P.O. Box 376, Summit, IL 60501. Representative: William H. Towle, 180 North LaSalle Street, Chicago, IL 60601. Transporting *such commodities* as are manufactured or dealt in by manufacturers of toilet preparations and costume jewelry, between Chicago, IL, on the one hand, and, on the other, points in CA, WA and OR. (Hearing site: Chicago, IL.)

MC 147110 (Sub-2F), filed December 8, 1979. Applicant: NATIONAL FREIGHTWAYS, INC., 1923 South 111th Street, Omaha, NE 68144. Representative: James F. Crosby, P.O. Box 37205, Omaha, NE 68137. Transporting *iron or steel articles* from Chicago, IL, to points in IA and NE. (Hearing site: Chicago, IL.)

Note.—Dual operation may be involved.

MC 147680 (Sub-2F), filed December 28, 1979. Applicant: RICHARD TARVIN, INC., Rural Route #1, Dewey, IL 61840. Representative: Edward D. McNamara, Jr., 907 South Fourth St., Springfield, IL 62703. Transporting (1) *soya products and by-products, and animal and poultry feed,* between the facilities of Central Soya Company, Inc., at Gibson City, IL, and the facilities of United Warehouse at East Peoria, IL, on the one hand, and, on the other, points in IN, (2) *soya products,* from Champaign, IL, to Lafayette, IN, and (3) *soya meal,* from Champaign, IL, to the facilities of Bernard Schmitt & Sons at Poseyville, IN. (Hearing site: Springfield, IL, or St. Louis, MO.)

MC 147681 (Sub-8F), filed December 16, 1979. Applicant: HOYA EXPRESS, INC., P.O. Box 543, R.D. 2, West Middlesex, PA 16159. Representative: Henry M. Wick, Jr., 2310 Grant Building, Pittsburgh, PA 15219, Transporting *aluminum and zinc alloy ingots,* between Maple Heights, OH, on the one hand, and, on the other, points in IL, IN, KY, MI, NY, PA and TN (Hearing site: Cleveland, OH, or Washington, DC.)

MC 147831 (Sub-12F), filed December 13, 1979. Applicant: CENTRAL STATES EXPRESS, INC., P.O. Box 2464, Jackson, TN 38301. Representative: Abraham A. Diamond, 29 South LaSalle Street, Chicago, IL 60603. Transporting *plastic articles,* between the facilities of Universal Packing Corporation, at or near Trenton, TN, on the one hand, and, on the other, points in AL, AR, FL, GA, IL, LA, MS, MO, NC, PA, SC, TX, VA, WI, and IN. Condition: The persons or persons who appear to be in common control of applicant and another regulated carrier must either file an application for approval of common control under 49 U.S.C. § 11343, or submit an affidavit indicating why such approval is necessary. (Hearing site: Jackson, TN.)

MC 148031 (Sub-4F), filed December 18, 1979. Applicant: G. W. CONTRACT TRUCK HAULERS, INC., 1271 Tacoma Drive, Atlanta, GA 30318. Representative: K. Edward Wolcott, P.O. Box 56387, Atlanta, GA 30343. *Contract carrier* transporting (1) *such commodities* as are dealt in or used by distributors of alcoholic beverages, from points in CA and those points in the United States in and east of TX, AR, MO, IA, and MN, to points in GA and FL, (2) *such commodities* as are dealt in by distributors of hotel and restaurants equipment, fixtures, and supplies, from those points in the United States in and east of TX, AR, MO, IA, and MN, to points in GA, and (3) *such commodities* as are dealt in by distributors of foodstuffs and snack items, from those points in the United States in and east of TX, AR, MO, IA, and MN, to points in GA, under continuing contract(s) in (1) above with Valley Distributing Corp., General Wholesale Company, Inc., and General Wholesale Beer Company, all of Atlanta, GA, and General Wholesale Company of Florida, of Jacksonville, FL, in (2) above with Wright Hotel Supply Corporation, of Altanta, GA, and in (3) above with Shurway Distributing Company, Inc., of Atlanta, GA. (Hearing site: Atlanta, GA.)

MC 148201 (Sub-2F), filed December 18, 1979. Applicant: RETAIL LEASING CORP., d.b.a. RETAIL TRANSPORTATION CO., 11301 Rockville Pike, Kensington, MD 20795. Representative: Edward F. Schiff, 1333 New Hampshire Avenue, N.W., Washington, DC 20036. *Contract carrier,* Transporting *such commodities* as are dealt in by retail clothing stores between Miami, FL, Smithville, TN, and Andalusa, AL, on the one hand, and, on the other, Woburn, MA, under continuing contract(s) with Mast Industries, Inc., a wholly-owned subsidiary of The Limited Stores, Inc., of Woburn, MA. (Hearing site: Washington, DC.)

MC 148281 (Sub-8F), filed December 17, 1979. Applicant: SUSANA TRANSPORT SYSTEMS, INC., 2845 Workman Mill Rd., Whittier, CA 90601. Representative: Miles L. Kavaller, 315 So. Beverly Dr., Suite 315, Beverly Hills, CA 90212. Transporting (1) *such commodities* as are manufactured or distributed by manufacturers or converters of cellulose materials and products and paper and paper products, (except commodities in bulk), (2) *equipment, materials, and supplies* used in the manufacture and distribution of the commodities named in (1) above, (except commodities in bulk, between points in CA, OR, and WA, restricted to the transportation of traffic originating at or destined to the facilities of Container Corporation of America. (Hearing site: San Jose or San Francisco, CA.)

MC 148281 (Sub-9F), filed December 20, 1979. Applicant: SUSANA TRANSPORT SYSTEMS, INC., 2845 Workman Mill Road, Whittier, CA 90601. Representative: Miles L. Kavaller, 315 S. Beverly Dr., No. 315, Beverly Hills, CA 90212. Transporting *plastic containers,* from Tacoma, WA to points in CA, CO, OR, and UT. (Hearing site: Tacoma or Seattle, WA.)

MC 148311 (Sub-2F), filed December 27, 1979. Applicant: DELIVERY SERVICES, INC., 3001 S. 45th St., Phoenix, AZ 85040. Representative: A Michael Bernstein, 1441 E. Thomas Rd., Phoenix, AZ 85014. Transporting *such commodities* as are dealt in by door to door sales businesses, between points in AZ. (Hearing site: Phoenix, AZ.)

MC 148370 (Sub-4F), filed December 21, 1979. Applicant: TRAFIK SERVICES, INC., 11 Newark St., Providence, RI 02908. Representative: A. Joseph Mega (same address as applicant). *Contract carrier,* transporting *paper and paper products,* (1) from Brownville, NY, to West Springfield, MA, and points in RI, and (2) from West Springfield, MA, to points in RI, under continuing contract(s) in (1) and (2) above with Whitman Products Ltd., of West Warwick, RI. (Hearing site: Providence, RI.)

Note.—Dual operations may be involved.

MC 148370 (Sub-5F), filed December 28, 1979. Applicant: TRAFIK SERVICES, INC., 11 Newark Street, Providence, RI 02908. Representative: A. Joseph Mega (same address as applicant). *Contract carrier,* transporting *steel water tanks,* from the plantsite of Amtrol, Inc., at or near West Warwick, RI, to the plantsite of Gould Pump Company, at or near Seneca Falls, NY, under continuing contract(s) with Amtrol, Inc., of West Warwick, RI. (Hearing site: Providence, RI.)

MC 148490 (Sub-2F), filed December 11, 1979. Applicant: C&N EVANS TRUCKING CO., INC., Route 2, Box 39–E, Stoneville, NC 27048. Representative: Clarence B. Evans (same address as applicant). Transporting *metal containers,* from the facilities of National Can Corporation at Winston-Salem, NC, to Bishopville, SC. (Hearing site: Charlotte or Raleigh, NC.)

MC 148751 (Sub-3F), filed December 21, 1979. Applicant: LINCOLN FREIGHT LINES, INC., P.O. Box 427, Lapel, IN 46051. Representative: Norman R. Garvin, 1301 Merchants Plaza, Indianapolis, IN 46204. Transporting *resin cartridges,* from the facilities of Bolt-Lock, Inc., at or near Minneapolis, MN, to points in AL, NY, PA, and WV. (Hearing site: Indianapolis, IN, or Chicago, IL.)

Note.—Dual operations may be involved.

MC 148831 (Sub-1F), filed December 28, 1979. Applicant: STUMPS REFRIGERATED EXPRESS, INC., R.D. 1, Tiro, OH 44887. Representative: David A. Turano, 100 East Broad Street, Columbus, OH 43215. Transporting (1) *plumbing materials,* and (2) *materials and supplies* used in the manufacture and distribution of the commodities in (1) above, (except commodities in bulk), between Ashland, Shelby, and Upper Sandusky, OH, on the one hand, and, on the other, those points in the United States in and east of ND, SD, NE, CO, OK, and TX. (Hearing site: Columbus, OH.)

MC 148861 (Sub-2F), filed December 28, 1979. Applicant: O. M. TALBOT, INC., Route 4, Box 679, South Boston, VA 24592. Representative: O. M. Talbot (same address as applicant). *Contract carrier,* transporting *crushed stone, sand, and dry asphalt,* from the facilities Trego Stone Corporation, at Skippers, VA, to points in Vance, Warren, Franklin, Halifax, Northhampton, Hertford, Bertie, Edgecombe, Nash, Martin, Gates, Chowan, Perquimans, Pasquotank, Camden, and Currituck

Counties, NC, under continuing contract(s) with Trego Stone Corporation, of Skippers, VA. (Hearing site: Richmond, VA, or Washington, DC.)

MC 149000 (Sub-3F), filed December 17, 1979. Applicant: JARBOE SALES CO., a partnership, 6929 East Reading Pl., Tulsa, OK 74115. Representative: Wilburn L. Williamson, Suite 615—East, The Oil Center, 2601 Northwest Expressway, Oklahoma City, OK 73112. Transporting (1) *furniture parts*, and (2) *materials and supplies* used in the manufacture of furniture parts, (except commodities in bulk), from the facilities of Leggett & Platt Incorporated at or near Carthage and Springfield, MO, to points in IN, KY, OH, and TN. (Hearing site: Tulsa, OK, or Dallas, TX.)

MC 149040 (Sub-2F), filed December 27, 1979. Applicant: BANNER TRANSFER CO., INC., 1403 Rowan Street, P.O. Box 664, Louisville, KY 40201. Representative: Robert H. Kinker, 314 West Main Street, P.O. Box 464, Frankfort, KY 40602. *Contract carrier*, transporting (1) *household appliances and parts* for appliances and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, (except commodities in bulk), between Louisville, KY, and Bloomington, IN, under continuing contract(s) with General Electric Company, of Louisville, KY. (Hearing site: Louisville, KY.)

MC 149091F, filed June 28, 1979. Applicant: AVERY TRUCKING CO., INC., 206 Moores Drive, Dahlonega, GA 30533. Representative: Thomas D. Rainey (same address as applicant). *Contract carrier*, transporting (1) *paper articles, and plastic articles, and plastic articles*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, (except commodities in bulk and commodities the transportation of which, because of size and weight, require the use of special equipment), between Albertville and Gasden, AL, Gary and Hammond, IN, New Liberia, LA, Bangor, Lewiston, Portland, and Waterville, ME, Kansas City, MO, Troy, OH, Memphis, TN, and Carrolton, TX, on the one hand, and, on the other, those points in the United States in and east of ND, SD, NE, CO, OK, and TX, under continuing contract(s) with Keyes Fibre Company, of Waterville, ME. (Hearing site: Atlanta, GA.)

MC 149100F, filed December 14, 1979. Applicant: JAMES V. PALMER d.b.a. JIM PALMER TRUCKING, 9730 Derby Drive, Missoula, MT 59801. Representative: Steven K. Kuhlmann, 2600 Energy Center One, 717 17th Street, Denver, CO 80202. Transporting *plastic pipe and fittings*, from the facilities of PLEXCO, Division of Amsted Industries, at or near Fairfield, IA, to points in IL, MN, WI, ND, SD, WY, MT, ID, WA, and OR. (Hearing site: Chicago, IL, or Denver, CO.)

Note.—Dual operations may be involved.

MC 149110F, filed December 13, 1979. Applicant: C. S. T., Inc., One Scout Avenue, South Kearny, NJ. Representative: Thomas J. Beener, One State Street Plaza, New York, NY 10004. Transporting *dry fertilizer* in containers, from Maumee, Holland, and Toledo, OH, to points in MN, IL, IA, NE, KS, NY, NJ, MA, CT, ME, NH, and PA, restricted to the transportation of traffic originating at the facilities of the Andersons at the named origins. (Hearing site: New York, NY.)

Note.—Dual operations may be involved.

MC 149300F, filed December 28, 1979. Applicant: FRANK L. CASTINE, INC., 1235 Chestnut Street, Athol, MA 01331. Representative: Donald R. Castine (same address as applicant). *Contract carrier*, transporting *equipment, materials, and supplies* used in the manufacture, construction, maintenance, and removal of telephones and telephone systems, between points in MA, under continuing contract(s) with New England Telephone Company, of Boston, MA. (Hearing site: Springfield or Boston, MA.)

Passenger

MC 149101F, filed December 17, 1979. Applicant: ALLYN KJARSGAARD, 2725 Fairfax St., Eau Claire, WI 54701. Representative: James L. Nelson, 1241 Pierce Butler Rt., St. Paul, MN 55104. Transporting *passengers and their baggage*, in special and charter operations, between points in Eau Claire, Chippewa, Dunn, Sauk, Columbia, Wood, Dane, Pepin, St. Croix, Piece, Buffalo, Trempeleau, LaCrosse, Jackson, Monroe, Juneau, Portage, and Marathon Counties, WI, on the one hand, and, on the other, points in the United States (including AK but excluding HI.) (Hearing site: St. Paul, MN.)

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Decided: February 27, 1980.

By the Commission, Review Board Number 3, Members Parker, Fortier and Hill.

MC 531 (Sub-438F), filed January 14, 1980. Applicant: YOUNGER BROTHERS, INC., 4904 Griggs Road (P.O. Box 14048), Houston, TX 77021. Representative: Wray E. Hughes (same address as applicant). Transporting *alcohol* in bulk, in tank vehicles, from Muscatine, ID to points in the United States (except AK and HI). (Hearing site: St. Louis, MO.)

MC 531 (Sub-439F), filed January 18, 1980. Applicant: YOUNGER BROTHERS, INC., 4904 Griggs Road (P.O. Box 14048), Houston, TX 77021. Representative: Wray E. Hughes (same address as applicant). Transporting *petroleum oil*, in bulk, in the tank vehicles, from the facilities of Witco Chemical Corporation, at Houston, TX, to points in St. Louis, MO-East St. Louis, IL, commercial zone. (Hearing site: New Orleans, LA.)

MC 730 (Sub-488F), filed January 21, 1980. Applicant: PACIFIC INTERMOUNTAIN EXPRESS CO., a corporation, 25 No. Via Monte, Walnut Creek, CA 94596. Representative: E. E. Reddick (same address as applicant). Transporting *chemicals* and *plastic materials*, between the facilities of BASF Wyandotte Corporation at or near Great Meadows, Cranbury, South Brunswick, NJ, on the one hand, and on the other, points in the United States (except AK and HI). (Hearing site: New York, NY or San Francisco, CA.)

MC 2860 (Sub-195F), filed January 11, 1980. Applicant: NATIONAL FREIGHT, INC., 71 West Park Avenue, Vineland, N.J. 08360. Representative: Peter J. Nickles, 888 Sixteenth Street, N.W., Washington, D.C. 20006. Transporting *such commodities as are dealt in or used by container manufacturers* (except commodities in bulk and those which because of size or weight require the use of special equipment), between points in the United States (except AK and HI). (Hearing site: Washington. DC.)

MC 2860 (Sub-196F), filed January 11, 1980. Applicant: NATIONAL FREIGHT, INC., 71 West Park Avenue, Vineland, N.J. 08360. Representative: Peter J. Nickles, 888 Sixteenth Street, N.W., Washington, D.C. 20006. Transporting *paper and paper products*, and *materials* and *supplies* and *equipment* used in the manufacture and distribution of paper and paper products (except commodities in bulk, in tank vehicles), between points in the United States (except AK and HI). (Hearing site: Washington, DC.)

MC 2860 (Sub-197F), filed January 11, 1980. Applicant: NATIONAL FREIGHT, INC., 71 West Park Avenue, Vineland, N.J. 08360. Representative: Peter J. Nickles, 888 Sixteenth Street, N.W., Washington, D.C. 20006. Transporting *such commodities as are dealt in or used by container manufacturers* (except commodities in bulk and those which because of size or weight require the use of special equipment) between points in the United States (except AK and HI). (Hearing site: Washington, DC.)

MC 2860 (Sub-198F), filed January 14, 1980. Applicant: NATIONAL FREIGHT, INC., 71 West Park Avenue, Vineland, NJ 08360. Representative: Peter J. Nickles, 888 Sixteenth Street, N.W., Washington, DC 20006. Transporting *such merchandise as is dealt in or used by manufacturers of glassware, closures, plastic articles, china ware and metal products* (except in bulk), between the facilities of Anchor Hocking at points in CA, FL, TX, IL, IN, MD, MI, NJ, OH, PA, and WV, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Washington, DC.)

MC 2860 (Sub-199F), filed January 14, 1980. Applicant: NATIONAL FREIGHT, INC., 71 West Park Avenue, Vineland, NJ 08360. Representative: Peter J. Nickles, 888 Sixteenth Street, N.W., Washington, DC 20006. Transporting *foodstuffs* and *materials, equipment* and *supplies* used in the manufacture and distribution of foodstuffs (except commodities in bulk and those which because of size or weight require the use of special equipment), between Grand Prairie, TX, Mechanicsburg and Pittsburgh, PA, Holland, MI, Muscatine, IA, Harrison, NJ, Fremont and Toledo, OH, Greenville, SC, and Jacksonville, FL, on the one hand, and, on the other, points in MN, WI, IA, IL, MO, KS, OK, TX, AR, LA, MS, TN, KY, IN, MI, OH, AL, GA, FL, SC, NC, VA, WV, DE, MD, PA, NJ, NY, CT, RI, MA, and DC. (Hearing site: Washington, DC.)

MC 2860 (Sub-200F), filed January 14, 1980. Applicant: NATIONAL FREIGHT, INC., 71 West Park Avenue, Vineland, NJ 08360. Representative: Peter J. Nickles, 888 Sixteenth Street, N.W., Washington, DC 20006. Transporting *canned juice and fruit*, from Lakeland, FL, to Charlotte, NC, Forest Park, GA, Hanover, PA, Jersey City, NJ, Liverpool, NY, and Everett, MA. (Hearing site: Washington, DC.)

MC 2860 (Sub-201F), filed January 21, 1980. Applicant: NATIONAL FREIGHT, INC., 71 West Park Avenue, Vineland, NJ 08360. Representative: Peter J. Nickles, 888 Sixteenth Street, N.W., Washington, DC 20006. Transporting *household appliances*, and *equipment, materials* and *supplies* used in the manufacture of household appliances (except in bulk), between the facilities of General Electric Company at points in the United States (except AK and HI). (Hearing site: Washington, DC.)

MC 2900 (Sub-415F), filed January 14, 1980. Applicant: RYDER TRUCK LINES, INC., Ranger Division, 2050 Kings Road, P.O. Box 2408–R, Jacksonville, FL 32203. Representative: S. E. Somers, Jr. (same address as applicant). Transporting *sheet steel containers*, from Arden, NC to Fremont, MI. (Hearing site: Charlotte, NC or Washington, DC.)

MC 2900 (Sub-416F), filed January 2, 1980. Applicant: RYDER TRUCK LINES, INC., 2050 Kings Road, P.O. Box 2408–R, Jacksonville, FL 32203. Representative: S. E. Somers, Jr. (same address as applicant). Transporting: (1) *general commodities*, (except those of unusual value, class A or B explosives, and commodities in bulk) restricted to the transportation of shipments having prior or subsequent movement by water and (2) *empty containers*, between Mobile, AL, on the one hand, and, on the other, points in the United States in and east of ND, SD, NE, CO, and NM. (Hearing site: Mobile, AL or Atlanta, GA.)

MC 5470 (Sub-214F), filed January 15, 1980. Applicant: TAJON, INC., R.D. 5, Mercer, PA 16137. Representative: Brian L. Troiano, 918, 16th Street, N.W., Washington, D.C. 20006. Transporting (1)(a) *ferroalloys, silicon metal, manganese metal, and (b) materials and supplies used in the manufacture* of commodities in (a), in dump vehicles, (a) between the facilities of Foote Mineral Company at or near Graham, WV, on the one hand, and, on the other, points in IA and MN. (b) between the facilities of Foote Mineral Company at or near Graham, WV, and Vanadis, OH, on the one hand, on the other, those points in the U.S. in and east of WI, IL, MO, AR, and TX, (2)(a) *ferroalloys, silicon metal, manganese metal, lithium ores and chemicals, and (b) materials and supplies used in the manufacture* of the commodities in (a), in dump vehicles between the facilities of Foote Mineral Company at or near New Johnsonville, TN, on the one hand, and on the other, those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX. (Hearing site: Philadelphia, PA or Washington, DC.)

MC 10881 (Sub-7F), filed January 14, 1980. Applicant: Dale Meyer Trucking Co., a corporation, P.O. Box 3548, Odessa, TX 79760. Representative: Richard Hubbert, P.O. Box 10236, Lubbock, TX 79408. Transporting *oilfield commodities* as described by the Commission in *Mercer Extension-Oilfield Commodities*, 74 MCC 459, between points in Ector County, TX, on the one hand, and, on the other, points in NM, OK, KS, TX, LA, CO, WY, and UT. (Hearing site: Dallas or Odessa, TX.)

MC 35320 (Sub-475F), filed January 2, 1980. Applicant: T.I.M.E.-DC, Inc., 2598 74th St., P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Transporting *general commodities*, (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Temperature Equipment Corp., at or near Rockford, IL, as an off-route point in connection with carrier's otherwise authorized regular route operations. (Hearing site: Chicago, IL or Washington, DC.)

Note.—Applicant intends to tack to its existing authority.

MC 11220 (Sub-195F), filed January 11, 1980. Applicant: GORDONS TRANSPORT, INC., 185 West McLemore Avenue, Memphis, TN 38101. Representative: James J. Emigh, P.O. Box 59, Memphis, TN 38101. Transporting *plastic and plastic products*, and *equipment, materials*, and *supplies* used in the manufacture and distribution of plastic and plastic products (except commodities in bulk), between the facilities of the Ethyl Corp., at or near Tiptonville, TN, on the one hand, and, on the other, points in AL, AR, GA, IL, IN, IA, KS, KY, LA, MI, MN, MS, MO, OH, OK, PA, TX, WV, and WI. (Hearing site: Baton Rouge, La.)

MC 35320 (Sub-476F), filed January 2, 1980. Applicant: T.I.M.E.–DC, INC., 2598 74th St., P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Transporting *general commodities*, (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Anniston, AL, without restriction and Cleveland, TN, as off-route points in connection with carrier's otherwise authorized regular route operations. (Hearing site: Chattanooga, TN or Washington, DC.)

Note.—Applicant intends to tack to its existing authority.

MC 35320 (Sub-477F), filed January 2, 1980. Applicant: T.I.M.E.–DC, INC., 2598 74th St., P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Transporting *general commodities*, (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of GK Technologies at or near Bonham, TX, as an off-route point in connection with carrier's otherwise authorized regular route operations. (Hearing site: Dallas, TX or Washington, DC.)

Note.—Applicant intends to tack to its existing authority.

MC 35320 (Sub-478F), filed January 2, 1980. Applicant: T.I.M.E.-DC, INC., 2598 74th St., P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Transporting *general commodities,* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Simsco-Turner Inc. at or near Demopolis, AL, without restriction, as an off-route point in connection with carrier's otherwise authorized regular route operations. (Hearing site: Montgomery, AL or Washington, DC.)

Note.—Applicant intends to tack to its existing authority.

MC 35320 (Sub-479F), filed January 2, 1980. Applicant: T.I.M.E.-DC, INC., 2598 74th St., P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Transporting *general commodities,* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Media Press, Inc. at or near Dexter, MO, as an off-route point in connection with carrier's otherwise authorized regular route operations. (Hearing site: Memphis, TN or Washington, DC.)

Note.—Applicant intends to tack to its existing authority.

MC 35320 (Sub-480F), filed January 2, 1980. Applicant: T.I.M.E.-DC, INC., 2598 74th St., P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Transporting *general commodities,* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Thompson Tractor Co., at or near Birmingham, AL, without restriction, as an off-route point in connection with carrier's otherwise authorized regular route operations. (Hearing site: Birmingham, AL or Washington, DC.)

Note.—Applicant intends to tack to its existing authority.

MC 35320 (Sub-481F), filed January 2, 1980. Applicant: T.I.M.E.-DC, INC., 2598 74th St., P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Transporting *general commodities,* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Plastic Clad Corp. at or near Birmingham, AL, without restriction, as an off-route point in connection with carrier's otherwise authorized regular route operations. (Hearing site: Birmingham, AL, or Atlanta, GA.)

Note.—Applicant intends to tack to its existing authority.

MC 35320 (Sub-483F), filed January 2, 1980. Applicant: T.I.M.E.-DC, INC., 2598 74th St., P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Transporting *general commodities,* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Schaefer Corporation at or near Madison, AL, without restriction, as an off-route point in connection with carrier's otherwise authorized regular route operations. (Hearing site: Huntsville, AL, or Washington, DC.)

Note.—Applicant intends to tack to its existing authority.

MC 35320 (Sub-484F), filed January 2, 1980. Applicant: T.I.M.E.-DC, INC., 2598 74th St., P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Transporting *general commodities,* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of the Forklift Repair Service Co. at or near Decatur, AL, without restriction, as an off-route point in connection with carrier's otherwise authorized regular route operations. (Hearing site: Chattanooga, TN, or Atlanta, GA.)

Note.—Applicant intends to tack to its existing authority.

MC 35320 (Sub-486F), filed January 2, 1980. Applicant: T.I.M.E.-DC, INC., 2598 74th St., P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Transporting *general commodities,* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Laredo, TX, on the one hand, and, on the other Fayetteville and Nashville, TN and Huntsville, AL. (Hearing site: San Antonio, TX, or Nashville, TN.)

MC 35320 (Sub-487F), filed January 2, 1980. Applicant: T.I.M.E.-DC, INC., 2598 74th St., P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Transporting *general commodities,* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Jeffreys Steel Co., Inc. at or near Columbus, MS, without restriction, as an off-route point in connection with carrier's otherwise authorized regular route operations. (Hearing site: Memphis, TN, or Washington, DC.)

Note.—Applicant intends to tack to its existing authority.

MC 35320 (Sub-488F), filed January 2, 1980. Applicant: T.I.M.E.-DC, INC., 2598 74th St., P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Transporting *general commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of the Encino Shirt Company at or near Moulton, AL, without restriction, as an off-route point in connection with carrier's otherwise authorized regular route operations. (Hearing site: Chattanooga, TN, or Washington, DC.)

Note.—Applicant intends to tack to its existing authority.

MC 35320 (Sub-489F), filed January 2, 1980. Applicant: T.I.M.E.-DC, INC., 2598 74th St., P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Transporting *general commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between the facilities of CSI-Bendoki, Inc., at or near Santa Ana, CA, on the one hand, and, on the other, Nashua, NH. (Hearing site: Los Angeles or Santa Ana, CA.)

MC 35320 (Sub-490F), filed January 2, 1980. Applicant: T.I.M.E.-DC, INC., 2598 74th St., P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Transporting *general commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Lawrence Corp. at or near Moulton, AL, without restriction, as an off-route point in connection with carrier's otherwise authorized regular route operations. (Hearing site: Chattanooga, TN, or Washington, DC.)

Note.—Applicant intends to tack to its existing authority.

MC 35320 (Sub-491F), filed January 2, 1980. Applicant: T.I.M.E.-DC, INC., 2598 74th St., P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G.

Thomas (same address as applicant). Transporting *general commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of B.I.O. Labs, Inc., at or near Conyers, GA, as an off-route point in connection with carrier's otherwise authorized regular route operations. (Hearing site: Atlanta, GA, or Washington, DC.)

Note.—Applicant intends to tack to its existing authority.

MC 35320 (Sub-492F), filed January 2, 1980. Applicant: T.I.M.E.-DC, INC., 2598 74th St., P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Transporting *general commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Stevens and Thompson Paper Co., at or near Greenwich, NY, as an off-route point in connection with carrier's otherwise authorized regular route operations. (Hearing site: Albany, NY, or Washington, DC.)

Note.—Applicant intends to tack to its existing authority.

MC 35320 (Sub-493F), filed January 2, 1980. Applicant: T.I.M.E.–DC, INC., 2598 74th Street, P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Transporting *general commodities,* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Veitch Machine Co., Inc. at or near Birmingham, AL, without restriction, as an off-route point in connection with carrier's otherwise authorized regular route operations. (Hearing site: Birmingham, AL or Atlanta, GA.)

Note.—Applicant intends to tack to its existing authority.

MC 35320 (Sub-494F), filed January 2, 1980. Applicant: T.I.M.E.–DC, INC., 2598 74th St., P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Transporting *general commodities,* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of the GAF Corporation at or near Calvert City, KY, as an off-route point in connection with carrier's otherwise authorized regular route operations. (Hearing site: Louisville, KY or Washington, DC.)

Note.—Applicant intends to tack to its existing authority.

MC 35320 (Sub-495F), filed January 2, 1980. Applicant: T.I.M.E.–DC, INC., 2598 74th St., P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Transporting *general commodities,* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving Ft. Dodge, IA, as an off-route point in connection with carrier's otherwise authorized regular route operations, restricted to traffic originating at or destined to the facilities of Centralab Div. Globe Union, Inc. (Hearing site: Ft. Dodge, IA, or Minneapolis, MN.)

Note.—Applicant intends to tack to its existing authority.

MC 35320 (Sub-496F), filed January 2, 1980. Applicant: T.I.M.E.–DC, INC., 2598 74th Street, P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Transporting *general commodities,* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of the Gardner Asphalt Corp. at or near Springville, AL, without restriction, as an off-route point in connection with carrier's otherwise authorized regular route operations. (Hearing site: Atanta, GA or Washington, DC.)

Note.—Applicant intends to tack to its existing authority.

MC 35320 (Sub-525F), filed January 2, 1980. Applicant: T.I.M.E.–DC, INC., 2598 74th St., P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Transporting *general commodities,* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of United Paper Co., Inc. at or near New Orleans, LA, as an off-route point in connection with carrier's otherwise authorized regular route operations. (Hearing site: New Orleans, LA or Washington, DC.)

Note.—Applicant intends to tack to its existing authority.

MC 35320 (Sub-526F), filed January 2, 1980. Applicant: T.I.M.E.–DC, INC., 2598 74th St., P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Transporting *general commodities,* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (a) between the facilities of Abex Corp., at or near Quemahoning Junction, Somerset County, PA on the one hand, and, on the other, points in the United States (except AK & HI), and (b) between the facilities of Abex Corp. at or near Corsicana, TX on the one hand, and, on the other, points in the United States (except AK & HI). (Hearing site: New York, NY or Washington, DC.)

MC 35320 (Sub-527F), filed January 2, 1980. Applicant: T.I.M.E.–DC, INC., 2598 74th St., P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Transporting *general commodities,* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Brungart Equipment Co., Inc., Allied Products Division, at or near Birmingham, AL, without restriction, as an off-route point in connection with carrier's otherwise authorized regular route operations. (Hearing site: Birmingham, AL or Atlanta, GA.)

Note.—Applicant intends to tack to its existing authority.

MC 35320 (Sub-528F), filed January 2, 1980. Applicant: T.I.M.E.–DC, INC., 2598 74th St., P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Transporting *general commodities,* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of the Barber-Colman Company at or near Huntsville, AL, without restriction, as an off-route point in connection with carrier's otherwise authorized regular route operations. (Hearing site: Huntsville, AL or Washington, DC.)

Note.—Applicant intends to tack to its existing authority.

MC 35320 (Sub-529F), filed January 2, 1980. Applicant: T.I.M.E.–DC, INC., 2598 74th Street, P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Transporting *general commodities,* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Nora Flooring Division, Robus Products Corp. at or near Madison, IN, as an off-route point in connection with

carrier's otherwise authorized regular route operations. (Hearing site: Louisville, KY or Washington, DC.)

Note.—Applicant intends to tack to its existing authority.

MC 35320 (Sub-530F), filed January 10, 1980. Applicant: T.I.M.E.–DC, INC., 2598 74th Street, P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). To operate as a *common carrier*, by motor vehicle, over regular routes transporting *general commodities*, (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Nelson and Taylor Co. at or near Gloversville, NY, as an off-route point in connection with carrier's otherwise authorized regular route operations. (Hearing site: Albany, NY or Washington, DC.)

Note.—Applicant intends to tack to its existing authority.

MC 38481 (Sub-21F), filed January 22, 1980. Applicant: FARRUGGIO'S BRISTOL AND PHILADELPHIA AUTO EXPRESS, INC., 1419 Radcliffe Street, Bristol, PA 19007. Representative: Alan Kahn, 1920 Two Penn Center Plaza, Philadelphia, PA 19102. Transporting *general commodities*, (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), having a prior or subsequent movement by rail, water or motor vehicle, between points in CT, DE, DC, MD, NJ, PA, and VA. (Hearing site: Philadelphia.)

MC 47171 (Sub-159F), filed January 2, 1980. Applicant: COOPER MOTOR LINES, INC., P.O. Box 2820, Greenville, SC 29602. Representative: Harris G. Andrews (same address as applicant). Transporting *textiles*, and *textile products, chemicals dyes* (except in bulk) and *machinery*, equipment and supplies used in the textile industry between Monroe, NC, and points in CT, DE, MA, MD, NJ, NY, PA, and RI. (Hearing site: Washington, DC.)

MC 56270 (Sub-37F), filed January 15, 1980. Applicant: LEICHT TRANSFER & STORAGE CO., a corporation, 1401–55 State St., P.O. Box 2385, Green Bay, WI 54306. Representative: Dennis L. Sedlacek (same address as applicant). Transporting (1) *tow tractors and equipment, materials and supplies* used in the manufacture of tow tractors between Sturgeon Bay, WI, on the one hand, and, on the other points in the U.S. (except AK and HI) (Hearing site: Madison or Milwaukee, WI.)

MC 56640 (Sub-45F), filed January 11, 1980. Applicant: DELTA LINES, INC., 333 Hegenberger Road, Oakland, CA 94621. Representative: Donald E. Fernaays, 4040 East McDowell Road, Suite 320, Phoenix, AZ 85008. Transporting *non-frozen canned goods*, from the facilities of Campbell Soup Co., at Sacramento, CA, to points in AZ. (Hearing site: San Francisco, CA.)

MC 61401 (Sub-20F), filed January 2, 1980. Applicant: MARX TRUCK LINE, INC., 220 Lewis St., Sioux City, IA 51101. Representative: Robert A. Wichser, P.O. Box 417, Sioux City, IA 51102. *Contract carrier* transporting (1) *iron and steel articles* as described in Appendix V to the report in *Descriptions in Motor Carrier Certificates* 61 M.C.C. 209 and 766, and (2) *materials and supplies* used in the installation, manufacture and distribution of the commodities in (1) above, from points in IL, Chicago, IL, points in IN, in the Chicago, IL, Commercial Zone, Milwaukee, WI, Shelby, OH, and St. Louis, MO, to Sioux City, IA, under continuing contract(s) with Prince Manufacturing Company and Sioux City Foundry Company both of Sioux City, IA. (Hearing site: Omaha, NE, or Washington, DC.)

MC 61440 (Sub-183F), filed January 22, 1980. Applicant: LEE WAY MOTOR FREIGHT, INC., 3401 N. W. 63rd Street, Oklahoma City, OK 73157. Representative: Richard H. Champlin, P.O. Box 12750, Oklahoma City, OK 73157. To operate as a *common carrier*, by motor vehicle, over regular routes, transporting general commodities (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment), serving the facilities of Brownberry Ovens, Inc., at or near Oconomowoc, WI, as an off-route point in connection with carrier's otherwise authorized regular route operations. (Hearing site: Oklahoma City, OK or Washington, DC.)

MC 61440 (Sub-185F), filed December 10, 1979. Applicant: LEE WAY MOTOR FREIGHT, INC., 3401 N.W. 63rd Street, Oklahoma City, OK 73116. Representative: Richard H. Champlin, P.O. Box 12750, Oklahoma City, OK 73157. Transporting *general commodities* (except articles of unusual value, classes A&B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between Atlanta, GA, and Birmingham, AL, as an alternate route for operating convenience only, serving no intermediate points, from Atlanta, GA, over Interstate Hwy 20 to Birmingham, AL, and return over the same route serving no intermediate points, (2) between Birmingham, AL, and Dallas, TX, as an alternate route for operating convenience only, serving the intermediate point of Interstate Hwy 20 and Interstate Hwy 59 near Meridian, MS, for purposes of joinder only. From Birmingham, AL, over Interstate Hwy 20 to Dallas, TX, and return over the same route serving the intermediate point of Interstate Hwy 20 and Interstate Hwy 59 near Meridian, MS, for purpose of joinder only. (3) From the junction of Interstate Hwy 20 and Interstate Hwy 59 at or near Meridian, MS, and Beaumont, TX, as an alternate route for operating convenience only, serving no intermediate points and serving the junction of Interstate Hwy 20 and Interstate Hwy 59 near Meridian, MS, as a point of joinder only. From junction of Interstate Hwy 20 and Interstate Hwy 59 at or near Meridian, MS, over Interstate Hwy 59 to the junction of Interstate Hwy 59 and Interstate Hwy 10, then over Interstate Hwy 10 to Beaumont, TX, and return over the same route serving no intermediate points and serving the junction of Interstate Hwy 20 and Interstate Hwy 59 as a point of joinder only. NOTE: The alternate routes sought herein are in connection with carrier's presently authorized regular route operations between Atlanta, GA, and Birmingham, AL, and Dallas and Beaumont, TX. Lee Way's present regular routes are via Atlanta, GA, Birmingham, AL, Nashville, TN, Memphis, TN, Oklahoma City, OK, Dallas, TX, Houston, TX, and Beaumont, TX. (Hearing site: Oklahoma City, OK or Washington, DC.)

MC 64600 (Sub-55F), filed November 6, 1979. Applicant: WILSON TRUCKING CORPORATION, P.O. Drawer 2, Fishersville, VA 22939. Representative: William J. Jones (same address as applicant). Over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment): (1) Between Norfolk, VA and Edenton, NC over U.S. Hwy 17; (2) between Norfolk, VA and Rocky Mount, NC, from Norfolk over U.S. Hwy 58 to its intersection with VA Hwy 189, then over VA Hwy 189 to its intersection with U.S. Hwy 258, then over U.S. Hwy 258 to its intersection with NC Hwy 97, then over NC Hwy 97 to its intersection with U.S. Hwy 301, then over U.S. Hwy 301 to Rocky Mount and return over the same route. Serving all intermediate points and points in the NC Counties of Camden, Pasquotank, Currituck,

Perquimans, Northampton, Halifax, Gates, Chowan, Hertford, Bertie, Edgecombe and Nash as off-route points in connection with routes described in (1) and (2) above. (Hearing site: Norfolk, or Richmond, VA.)

MC 68980 (Sub-22F), filed January 14, 1980. Applicant: CHECKER EXPRESS CO., a Corporation, 6801 South 13th Street, Milwaukee, WI 53221. Representative: Abraham A. Diamond, 29 South LaSalle Street, Chicago, IL 60603. Transporting *general commodities* (except those of unusual value, classes A and B explosives, commodities in bulk, and those because of size and weight require special equipment), (1) Between St. Louis, MO and Memphis, TN; from St. Louis over Interstate Hwy 55 to junction Interstate Hwy 240, then over Interstate Hwy 240 to Memphis, TN, and return over the same route, serving no intermediate points; (2) Between St. Louis and Kansas City, MO; over Interstate Hwy 70, serving no intermediate points; (3) Between Kansas City, MO and Chicago, IL, from Kansas City, MO over Interstate Hwy 70 to junction Interstate Hwy 55, then over Interstate Hwy 55 to Chicago, IL, and return over the same route serving no intermediate points; (4) Between Chicago, IL and Minneapolis, MN; from Chicago, IL, over Interstate Hwy 90 to junction Interstate Hwy 94, then over Interstate Hwy 94 to junction Interstate Hwy 494 or, as an alternate route for operating convenience only, over Interstate Hwy 94 to junction Interstate Hwy 35, then over Interstate Hwy 35 to junction Interstate Hwy 494, then over Interstate Hwy 494 to Minneapolis, MN and return over the same route, serving no intermediate points; (5) Between Minneapolis, MN and Milwaukee, WI; from Minneapolis, MN, over Interstate Hwy 494 to junction Interstate Hwy 94, then over Interstate Hwy 94 to Milwaukee, WI, and return over the same route, serving no intermediate points; (6) Between Milwaukee and Eau Claire, WI, serving LaCrosse, WI, as an off route point, and Madison, WI, as an intermediate point; from Milwaukee over Interstate Hwy 94 to Madison, WI, then over Interstate Hwy 94 to Eau Claire, WI, (with service to LaCrosse, WI, over Interstate Hwy 90 from Madison, WI), and return over the same route, serving no intermediate points except Madison, WI, (7) Between Chicago, IL, and Detroit, MI, over Interstate Hwy 94 serving no intermediate points, restricted to the transportation of traffic having a prior or subsequent movement by air. (Hearing site: Chicago, IL.)

MC 77061 (Sub-29F), filed January 21, 1980. Applicant: SHERMAN BROS., INC., 29534 Airport Road (Box 706), Eugene, OR 97402. Representative: Russell M. Allen, 1200 Jackson Tower, Portland, OR 97205. Transporting *steel coils and corrugated pipe and accessories* from the facilities of United States Steel at Pittsburgh, CA, and Pacific Corrugated Pipe at Sacramento, CA to the facilities of Pacific Corrugated Pipe at Springfield, OR. (Hearing site: Portland or Eugene, OR.)

MC 93980 (Sub-87F), filed January 18, 1980. Applicant: VANCE TRUCKING CO., INC., P.O. Box 1119, Henderson, NC 27536. Representative: Edward G. Villalon, 1032 Pennsylvania Building, Pennsylvania Ave. and 13th St., N.W., Washington, DC 20004. Transporting *building and roofing materials*, from Manville, NJ, to points in FL, GA, SC, NC, VA, WV, OH, TN and KY. (Hearing site: Washington, DC.)

MC 94430 (Sub-50F), filed December 26, 1979. Applicant: WEISS TRUCKING CO., INC., P.O. Box 7, Mongo, IN 46771. Representative: James R. Stiverson, 1396 West Fifth Ave., Columbus, OH 43212. Transporting *cement and mortar*, from points in Charlevoix and Emmet Counties, MI, to points in IL, IN, OH and WI. (Hearing site: Chicago, IL, or Washington, DC.)

MC 95540 (Sub-1145F), filed November 26, 1979. Applicant: WATKINS MOTOR LINES, INC., P.O. Box 1636, Lakeland, FL 33802. Representative: Paul M. Daniell, P.O. Box 56387, Atlanta, GA 30343. Over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring the use of special equipment), (1) between Junction U.S. Hwy 411 and U.S. Hwy 41 at or near Cartersville, GA and Bristol, VA, from Junction U.S. Hwy 411 and U.S. Hwy 41 at or near Cartersville, GA, then over U.S. Hwy 411 to Johnson City, TN, then over U.S. Hwy 19W to Bristol, VA and return over the same route, serving all intermediate points in GA, (2) between Chattanooga, TN and Bristol, VA, (a) from Chattanooga, TN, over Interstate 75 to Knoxville, TN, then over U.S. Hwy 11W to Bristol, VA and return over the same route, (b) from Chattanooga, TN over Interstate 75 to Knoxville, TN, then over Interstate 81 to Bristol, VA and return over the same route, (c) from Chattanooga, TN over Interstate 75 to Cleveland, TN, then over U.S. Hwy 64 to Junction U.S. Hwy 411, then over U.S. Hwy 411 to Johnson City, TN, then over U.S. Hwy 19W to Bristol, VA and return over the same route, serving no intermediate points, (3) between Asheville, NC and Bristol, VA, from Asheville, NC over U.S. Hwy 19 to Junction U.S. Hwy 23, then over U.S. Hwy 23 to Johnson City, TN, then over U.S. Hwy 19W to Bristol, VA and return over the same route, serving all intermediate points in NC, (4) between Charlotte, NC and Bristol, VA, from Charlotte, NC over Interstate 85 to Junction U.S. Hwy 321, then over U.S. Hwy 321 to Bristol, VA and return over the same route, serving all intermediate points in NC, (5) between Charlotte, NC and Bluefield, VA, (a) over Interstate 77, and (b) over U.S. Hwy 21, serving all intermediate points, (6) between Winston-Salem, NC and Bluefield, VA, over U.S. Hwy 52, serving all intermediate points, (7) between Abingdon and Bluefield, VA, over U.S. Hwy 19, serving all intermediate points, (8) between Bristol, VA and Baltimore, MD, from Bristol, VA over Interstate 81 to Junction U.S. Hwy 30 at or near Chambersburg, PA, then over U.S. Hwy 30 to Junction PA Hwy 94, then over PA Hwy 94 to Hanover, PA, then over PA Hwy 94 to Junction MD Hwy 30, then over MD Hwy 30 to Baltimore, MD and return over the same route, serving all intermediate points in VA and Hanover, PA, (9) between Greensboro, NC and Monterey, VA, over U.S. Hwy 220, serving all intermedidate points, (10) between Norfolk and Hillsville, VA, over U.S. Hwy 58 serving all intermediate points, (11) between Norfolk and Roanoke, VA, from Norfolk, VA over U.S. Hwy 58 to Junction U.S. Hwy 460 to Roanoke, VA and return over the same route, serving all intermediate points, (12) between Norfolk and Rocky Mt., VA, from Norfolk, VA over U.S. Hwy 58 to Junction U.S. Hwy 460, then over U.S. Hwy 460 to Junction VA Hwy 40, then over VA Hwy 40 to Rocky Mt., VA, and return over the same route, serving all intermediate points, (13) between Norfolk, and Monterey, VA, from Norfolk, VA over Interstate 64 to Junction U.S. Hwy 250 at or near Waynesboro, VA, then over U.S. Hwy 250 to Monterey, VA and return over the same route, serving all intermediate points, (14) between Norfolk and Winchester, VA, from Norfolk, VA over U.S. Hwy 17 to Junction U.S. Hwy 50 at or near Paris, VA, then over U.S. Hwy 50 to Winchester, VA and return over the same route, serving all intermediate points, (15) between Pleasant Hill, NC and Baltimore, MD, from Pleasant Hill, NC over U.S. Hwy 301 to Junction MD Hwy 3, then over MD Hwy 3 to Baltimore, MD and return over the same route, serving all intermediate points in

NC and VA, (16) between Danville, VA and Baltimore, MD, over U.S. Hwy 29, serving all intermediate points in VA, (17) between Richmond and Harrisonburg, VA over U.S. Hwy 33, serving all intermediate points, (18) between Richmond and Clifton Forge, VA, over U.S. Hwy 60, serving all intermediate points, (19) between Richmond, VA and Baltimore, MD, over Interstate 95 serving all intermediate points in VA, and (2) between Danville and Richmond, VA, over U.S. Hwy 360, serving all intermediate points, (21) between Keysville, VA and Gettysburg, PA, over U.S. Hwy 15, serving all intermediate points in VA and serving Gettysburg, PA for purpose of joinder only, (22) between Rocky Mt., and Lynchburg, VA, from Rocky Mt., VA, over VA Hwy 122 to Bedford, VA, then over U.S. Hwy 221 to Lynchburg, VA and return over the same route serving all intermediate points, (23) between South Hill and Petersburg, VA, over Interstate 85, serving all intermediate points, (24) between Middletown, VA and Hanover, PA, from Middletown over U.S. Hwy 340 to Frederick, MD, then over MD Hwy 194 to the MD-PA State line, then over PA Hwy 194 to Hanover, PA and return over the same route serving all intermediate points in VA and serving Frederick, MD for purpose of joinder only, (25) between Washington, DC and Frederick, MD, over Interstate 270, serving no intermediate points and serving Frederick, MD for purpose of joinder only. (Hearing site: Washington, DC.)

Note.—Service is authorized at all points in VA not on the above-described regular routes, as off-route points in connection with the regular route operations described in (1) through (25) above. The purpose of this application is to convert an existing irregular route authority to regular route and eliminate gateways applicable thereto. Issuance of a certificate is subject to the coincidental cancellation, at applicant's written request, of the outstanding certificate in MC 95540 (Sub-1117).

MC 102150 (Sub-15F), filed January 11, 1980. Applicant: JENSEN TRANSPORT, INC., P.O. Box 368, Albert Lee, MN. Representative: Richard L. Gill, 1805 American National Bank Bldg., St. Paul, MN 55101. Transporting *gasoline and fuel oil,* from the pipeline terminals of Kneb Pipeline Co. and Williams Bros. Pipeline Co., in Dickenson County, IA to points in that part of MN on and east of U.S. Hwy 169 extending from the IA-MN state line to Mankato those on and south of U.S. Hwy 14 from Mankato to Owatonna, and those on and west of U.S. Hwy 218 from Owatonna to the MN–IA state line. (Hearing site: St. Paul, MN.)

MC 103490 (Sub-78F), filed January 21, 1980. Applicant: PROVAN TRANSPORT CORP., 210 Mill Street, Newburgh, NY 12550. Representative: Eugene M. Malkin, Suite 1832, Two World Trade Center, New York, NY 10048. Transporting *petroleum wax,* in bulk, in tank vehicles, from Petrolia, PA, to Passaic, NJ. (Hearing site: New York, NY.)

Note.—Dual operations may be involved.

MC 106400 (Sub-121F), filed January 21, 1980. Applicant: KAW TRANSPORT CO., a corporation, P.O. Box 8510, Sugar Creek, MO 64054. Representative: James C. Swearengen, P.O. Box 456, Jefferson City, MO 65102. Transporting *asphalt, asphalt cement, asphalt cutback, and emulsified asphalt,* in bulk, in tank vehicles, from the facilities of Southern States Asphalt Company, Division of Ashland Oil, Inc., at Nevada, MO, to points in KS. (Hearing site: Kansas City, MO.)

MC 106401 (Sub-79F), filed January 14, 1980. Applicant: JOHNSON MOTOR LINES, INC., P.O. Box 31577, Charlotte, NC 28231. Representative: Roger W. Rash (same address as applicant). Transporting *lighting fixtures,* and *parts* for lighting fixtures, from the facilities of Lithonia Lighting, Division of National Service Industries, at or near Cochran and Conyers, GA to points in VA. (Hearing site: Atlanta, GA or Washington, DC.)

MC 106401 (Sub-80F), filed January 22, 1980. Applicant: JOHNSON MOTOR LINES, INC., P.O. Box 31577, Charlotte, NC 28231. Representative: Roger W. Rash (same address as applicant). Transporting (1) *iron and steel articles* from the facilities of or used by Formetco., Inc., at Atlanta, GA and at or near Duluth, GA to points in TX and those points in the United States in and east of AR, IA, LA, MN, and MO, and (2) *materials, supplies and equipment,* (except commodities in bulk), used in the manufacture and distribution of iron and steel articles from points in TX and those points in the United States in and east of AR, IA, LA, MN, and MO to the facilities of or used by Formetco, Inc., at Atlanta, GA, and at or near Duluth, GA. (Hearing site: Atlanta, GA or Washington, DC.)

MC 109821 (Sub-67F), filed January 14, 1980. Applicant: TAYNTON FREIGHT SYSTEM, INC., 40 Main Street, Wellsboro, PA 19601. Representative: Dewey T. Whitford, 40 Main Street, Wellsboro, PA 16901. Transporting *chain* and *sprocket drives, sprocket wheels, belting* and *sprocket, electronic controllers, power transmission machinery, clutches, sheaves, wheels, belts, belting, boxes plastic* and *rubber articles;* and *supplies* used in the *manufacture* and *distribution* of the foregoing *commodities,* between the facilities of Morse Chain Co., Div. of Borg Warner Co. at Ithaca, NY, and Florence, KY, on the one hand, and, on the other, points in IN, KY, NJ, NY, OH, PA and WV. (Hearing site: Philadelphia, PA, or Washington, DC.)

MC 111231 (Sub-295F), filed January 14, 1980. Applicant: JONES TRUCK LINES, INC., 610 E. Emma Avenue, Springdale, AR 72764. Representative: John C. Everett, 140 E. Buchanan, P.O. Box A, Prairie Grove, AR 72753. Transporting *glazed building blocks, concrete building blocks,* and *tile,* from Lubbock, TX, to points in AR, KS, LA, MS, OK, NM, AZ, and CO. (Hearing site: Lubbock, TX, or Little Rock, AR.)

MC 111231 (Sub.296F), filed January 15, 1980. Applicant: JONES TRUCK LINES, INC., 610 E. Emma Avenue, Springdale, AR 72764. Representative: John C. Everett, 140 E. Buchanan, P.O. Box A, Prairie Grove, AR 72753. Transporting (1) *material handling equipment* and *articles* used or dealt in by manufacturers and jobbers of material handling equipment from points in Ouachita county, AR to points in TX, LA, OK, and MS and (2) *reworked material handling equipment, material, equipment,* and *supplies* used in the manufacture of material handling equipment in the reverse direction.(Hearing site: Camden, or Little Rock, AR.)

MC 111231 (Sub-328F), filed January 18, 1980. Applicant: INDIANA REFRIGERATOR LINES, INC., P.O. Box 552, Riggin Road, Muncie, IN 47305. Representative: Henry Higgs (same address as applicant). Transporting *petroleum and petroleum products, vehicle body sealer, and sound deadener compounds (except in bulk),* from Emlenton, Farmers Valley, and North Warren, PA, Buffalo and North Tonawanda, NY, and Congo and St. Marys, WV, to points in OH, IN, IL, WI, KS, IA, NE, MN, MO, GA, FL, AL, NC, SC, KY, TN, NY, and NJ. (Hearing site: Pittsburgh, PA, or Washington, DC.)

MC 113651 (Sub-329F), filed January 18, 1980. Applicant: INDIANA REFRIGERATOR LINES, INC., P.O. Box 552, Riggin Road, Muncie, IN 47305. Representative: Henry Higgs (same address as applicant). Transporting *such commodities as are dealt in by wholesale, retail, chain stores,* and *food distribution houses,* from Indianapolis, IN, to those points in the United States in and east of ND, SD, NE, KS, OK, and TX. (Hearing site: Indianapolis, IN, or Washington, DC.)

MC 114290 (Sub-99F), filed January 22, 1980. Applicant: EXLEY EXPRESS, INC., 2610 S.E. Eighth, Portland, OR 97202. Representative: Nick I. Goyak, 555 Benjamin Franklin Plaza, One Southwest Columbia, Portland, OR 97258. Transporting *paper and paper products* from Gardiner, OR, to points in CA. (Hearing site: Portland, OR, or Seattle, WA.)

MC 115180 (Sub-102F), filed January 22, 1979. Applicant: ONLEY REFRIGERATED TRANPORTATION, INC., 265 West 14th Street, New York NY 10011. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. Transporting *meats, meat products, meat by-products, and articles distributed by meat-packing houses* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 MCC 209 and 766 (except hides and skins and commodities in bulk), from the facilities utilized by Wilson Foods Corporation at Omaha, NE, to points in CT, DE, IA, ME, MD, MA, MN, NH, NJ, NY, OH, PA, RI, VT, VA, and DC, restricted to the transportation of traffic originating at the above named origin and destined to the above named destinations. (Hearing site: Oklahoma City, OK, or Washington, DC.)

MC 115311 (Sub-387F), filed January 21, 1980. Applicant: J & M TRANSPORTATION CO., INC., P.O. Box 488, Milledgeville, GA 31061. Representative: Paul M. Daniell, P.O. Box 56386, Atlanta, GA 30343. Transporting *alcoholic beverages* and *materials, equipment,* and *supplies* used in the manufacture and distribution of alcoholic beverages (except in bulk in tank vehicles) between Ft. Smith, AR, Bardstown and Louisville, KY, New Orleans, LA, and Plainfield, IL, on the one hand, and, on the other, points in the United States (except AK and HI), restricted to the transportation of traffic originating at or destined to the facilities of Hiram Walker & Sons, Inc. (Hearing site: Chicago, IL, or Atlanta, GA.)

MC 115331 (Sub-532F), filed January 14, 1980. Applicant: TRUCK TRANSPORT, INC., 29 Clayton Hills Lane, St Louis, MO 63131. Representative: J. R. Ferris, 11040 Manchester Road, St. Louis, MO 63122. Transporting *silica sand, silica flour, stone, sand, gravel,* and *sand and gravel with additives,* from St. Louis, MO, and points in St. Charles, St. Louis Jefferson, St. Francois, Perry, Washington, Ste. Genevieve, Lewis and Marion Counties, MO to those points in the United States in and east of ND, SD, NE, KS, OK, and TX. (Hearing site: St. Louis, MO.)

MC 115651 (Sub-78F), filed January 14, 1980. Applicant: KANEY TRANSPORTATION, INC., 7222 Cunningham Road, Rockford, IL 61102. Representative: E. Stephen Heisley, 66 11th Street, Washington, D.C. 20001. Transporting (1) *liquid fertilizer,* in bulk, in tank vehicles from Fort Madison, IA and points within ten (10) miles of Fort Madison, IA to points in IL, IN, IA, KS, KY, MI, MN, MO, NE, ND, OH, SD, WI, and (2) *anhydrous ammonia, fertilizer solution and manufactured fertilizer* dry, in bulk from Fort Madison, IA, and points within ten (10) miles of Fort Madison to points in IL, IA, MO, MN, WI. (Hearing site: Chicago, IL, or Milwaukee, WI.)

MC 115651 (Sub-79F), filed January 15, 1980. Applicant: KANEY TRANSPORTATION, INC., 7222 Cunningham Road, Rockford, IL 61102. Representative: E. Stephen Heisley, 666 11th Street, Washington, D.C. 20001. Transporting *petroleum products,* in bulk, in tank vehicles from Rockford, IL and points within five (5) miles of Rockford to Clinton, IA. (Hearing site: Chicago, IL or Milwaukee, WI.)

MC 115651(Sub-80F), filed January 21, 1980. Applicant: KANEY TRANSPORTATION, INC., 7222 Cunningham Road, Rockford, IL 61102. Representative: E. Stephen Heisley, 666 11th Street, Washington, D.C. 20001. Transporting *white oil,* in bulk, in tank vehicles, from Whiting, IN, to those points in IL on and north of Interstate Hwy. 80 (Hearing site: Chicago, IL Milwaukee, WI.)

MC 115651(Sub-81F), filed January 21, 1980. Applicant: KANEY TRANSPORTATION, INC., 7222 Cunningham Road, Rockford, IL 61102. Representative: E. Stephen Heisley, 666 11th Street, Washington, D.C. 20001. Transporting *petroleum products,* in bulk, in tank vehicles, from Rockford, IL, to points in WI. (Hearing site: Chicago, IL or Milwaukee, WI.)

MC 115931 (Sub-105F), filed January 2, 1980. Applicant: BEE LINE TRANSPORTATION, INC., P.O. Box 3987, Missoula, MT 59801. Representative: Gene P. Johnson, P.O. Box 2471, Fargo, ND 58108. Transporting: (1)(a) *buildings,* complete, knocked-down or in sections, (b) *building sections and panels,* and (c) *prefabricated metal structural components* from the facilities of American Buildings Co. at Carson City, NV, to points in AZ, CA, CO, ID, MT, NM, OR, TX, UT, WA, and WY; and (2) *materials, equipment and supplies* (except in bulk) used in the manufacture and servicing of the commodities named in (1) above, from points in the United States (except AK and HI) to the facilities of American Buildings Co. at Carson City, NV. (Hearing site: Reno or Carson City, NV.)

MC 117730(Sub-75F), filed January 15, 1980. Applicant: KOUBENEC MOTOR SERVICE, INC., Route 47, Huntley, IL 60142. Representative: Stephen H. Loeb, Suite 2027, 33 No. LaSalle, St., Chicago, IL. 60602. Transporting *feed ingredients,* from the facilities of Grain Processing Corporation at or near Muscatine, IA to points in IL, IN, MI, MN, MO, NE, OH, SD, and WI. (Hearing site: Chicago, IL.)

MC 121060 (Sub-108F), filed May 29, 1979, and previously noticed in **Federal Register** issue of November 29, 1979. Applicant: ARROW TRUCK LINES, INC., P.O. Box 1416, Birmingham, AL 35201. Representative: William P. Jackson, Jr., 3426 N. Washington Blvd., P.O. Box 1240, Arlington, VA 22210. Transporting *construction materials* and *materials and supplies* used in the manufacture and distribution of construction materials, (except commodities in bulk), between the facilities of The Celotex Corporation, at or near Lagro, IN, on the one hand, and, on the other, those points in the United States in and east of ND, SD, NE, KS, OK, and TX.

Note: This republication shows Lagro, IN, as an origin or destination State in lieu of Largo, IN. (Hearing site: Tampa, FL, or Washington, DC.)

MC 121060 (Sub-122F), filed January 14, 1980. Applicant: ARROW TRUCK LINES, INC., P.O. Box 1416, Birmingham, AL 35201. Representative: Ronald F. Harris (same address as applicant). Transporting (1)(a) *plastic pipe, plastic pipe fittings and conduits, connections valves,* and (b) *materials and supplies* (except in bulk) used in the installation of commodities in (a) from points in Geneva County, AL, to points in the United States (except AK and HI); and (2) *materials* and *supplies* (except in bulk) used in the manufacture of the commodities named in (1) in the reverse direction. (Hearing site: Montgomery, AL or Washington, DC.)

MC 121470 (Sub-52F), filed January 22, 1980. Applicant: TANKSLEY TRANSFER COMPANY, a corporation, 801 Cowan Street, Nashville, TN 37207. Representative: Roy L. Tanksley (same address as applicant). Transporting *iron* and *steel articles,* between the facilities of Tennessee Forging Steel Crop., and Newport Steel Corp., a Division of Tennessee Forging Steel, at or near Harriman, TN, and Newport, AR on the one hand, and, on the other, points in AL, MS, GA, NC, SC, VA, PA, IN, IL, KY, FL, OH, WV, TN, MO, AR, and LA. (Hearing site: Nashville, TN.)

MC 121470 (Sub-53F), filed January 22, 1980. Applicant: TANKSLEY TRANSFER COMPANY, a corporation, 801 Cowan Street, Nashville, TN 37207. Representative: Roy L. Tanksley (same address as applicant). Transporting *pre-engineered and prefabricated buildings,* knocked down, and *accessories* for pre-engineered and prefabricated buildings, from the facilities of Bigbee Steel Buildings, Inc., at or near Muscle Shoals, AL, to points in the United States (except AK and HI.) (Hearing site: Nashville, TN.)

MC 121470 (Sub-54F), filed January 22, 1980. Applicant: TANKSLEY TRANSFER COMPANY, a corporation, 801 Cowan Street, Nashville, TN 37207. Representative: Roy L. Tanksley (same address as applicant). Transporting *iron* and *steel articles,* from the facilities of A. J. Gerrard and Company at or near Florence, AL, to points in IL, KY, and TN. (Hearing site: Nashville, TN.)

MC 124821 (Sub-76F), filed January 21, 1980. Applicant: GILCHRIST TRUCKING, INC., 105 North Keyser Avenue, Old Forge, PA 18518. Representative: John W. Frame, Box 626, 2207 Old Gettysburg Road, Camp Hill, PA 17011. Transporting *beds, accessories* for beds, *mattresses, bedding,* and *furniture,* from Elizabeth, NJ, to Albany, NY, and those points in NY on and west of U.S. Hwy 11. (Hearing site: Harrisburg, PA.)

MC 124821 (Sub-77F), filed January 21, 1980. Applicant: GILCHRIST, TRUCKING, INC., 105 North Keyser Avenue, Old Forge, PA 18518. Representative: John W. Frame, Box 626, 2207 Old Gettysburg Road, Camp Hill, PA 17011. Transporting (1) *foodstuffs, pet foods,* and *animal feeds,* and (2) *such commodities* as are used in the processing, milling, packaging, manufacture or sale of foodstuffs, pet foods, and animal feeds (except commodities in bulk, in tank vehicles), between those points in the United States in and east of ND, SD, NE, CO, OK, and TX, restricted to the transportation of traffic originating at or destined to the facilities of Carnation Company. (Hearing site: Harrisburg, PA.)

MC 125561 (Sub-4F), filed January 2, 1980. Applicant: SUNNYSIDE TRANSFER, INC., 7th & Railroad (PO box 526), Sunnyside, WA 98944. Representative: George H. Hart, 1100 IBM Building, Seattle, WA 98101. Over regular routes, transporting *general commodities,* (except those of unusual value, classes A & B explosives, household goods as defined by the Commission, commodities in bulk, and commodities which, because of size or weight, require special equipment) (1) Between Yakima, WA, and Walla Walla, WA, serving all intermediate points and the off route points of Moxee City, Harrah, White Swan, Ice Harbor Dam and College Place: (a) from Yakima over U.S. Hwy 12 to Walla Walla and return over the same route; (b) from Yakima over U.S. Hwy 97 to its junction with WA, Hwy 22 at or near Toppenish, WA and then over WA, Hwy 22 to its junction with U.S. Hwy 12 at or near Prosser, thence over U.S. Hwy 12 to Walla Walla and return over the same route; (2) Between Kennewick, WA and Yakima, WA serving all intermediate points and off route points of Moxee City, Harrah, and White Swan: (a) from Kennewick, WA over U.S. Hwy 12 and return over the same route; (b) from Kennewick, WA over U.S. AHwy 12 to its junction with WA Hwy 22 at or near Prosser, WA and then over WA Hwy 22 to its junction with U.S. Hwy 97 at or near Toppenish, WA and then via U.S. Hwy 97 to Yakima, WA and return over the same route. (Hearing site: Seattle, WA or Portland, OR.)

MC 127840 (Sub-158F), filed January 2, 1980. Applicant: MONTGOMERY TANK LINES, INC., 17550 Fritz Dr., Lansing, IL 60438. Representative: William H. Towle, 180 North LaSalle St., Chicago, IL 60601. Transporting *chemicals,* in bulk, in tank vehicles, from the facilities of E. I. DuPont de Nemours and Company, Inc., at Orange, Dowling and Victoria, TX to points in the United States (except AK and HI). (Hearing site: Houston, TX, or Chicago, IL.)

MC 128831 (Sub-15F), filed January 14, 1980. Applicant: DIXON RAPID TRANSFER, INC., Rt. 64 East, Mt. Morris, IL 61054. Representative: Abraham A. Diamond, 29 South La Salle Street, Chicago, IL 60603. Transporting *pitch targets,* from the facilities of Reagent Chemical & Research, Inc. White Flyer Div., at Joplin, MO, and Pittsburgh, PA and Remington Arms Co. at Findlay, OH, to points in IL, IA, MN, IN and MO. (Hearing site: Chicago IL.)

MC 129480 (Sub-51F), filed Janaury 11, 1980. Applicant: TRI-LINE EXPRESSWAYS LTD., P.O. Bag 1212, Stn. T, Calgary, Alberta, Canada T2H 2J1. Representative: Richard S. Madelson, Suite 1600 Lincoln Center, 1660 Lincoln Street, Denver, CO 80264. Transporting *glass,* from points in CA (except Lathrop) to ports of entry on the international boundary line between the United States and Canada. (Hearing site: San Francisco, CA.)

MC 134030 (Sub-2F), filed January 14, 1980. Applicant: ATLANTIC MOVING & STORAGE, INC., 1314 Chattanhoochee Ave., N.W., Atlanta, GA 30318. Representative: Robert J. Gallagher, 1000 Connecticut Avenue, N.W., Suite 1200, Washington, D.C. 20036. Transporting *household goods,* as defined by the Commission, between points in GA, FL, and TX, on the one hand, and, on the other, points in GA, FL, TX, LA, NC, SC, AL, MS, KY, TN, AR, and OK. (Hearing site: Atlanta, GA.)

MC 135070 (Sub-146F), filed January 22, 1980. Applicant: JAY LINES, INC., P.O. Box 30180, Amarillo, TX 79120. Representative: Gailyn L. Larsen, P.O. Box 82816, Lincoln, NE 68501. Transporting (1) *bananas,* and (2) *agricultural commodities* otherwise exempt from regulation under 49 U.S.C. § 10526(a)(6), in mixed loads with bananas, from Charleston, SC, to points in IL, IN, IA, KY, MI, MN, MO, NE, ND, OH, SD, WV, and WI. (Hearing site: New York City, NY, or Dallas, TX.)

Note.—Dual operations may be involved.

MC 135070 (Sub-147F), filed January 22, 1980. Applicant: JAY LINES, INC., P.O. Box 30180, Amarillo, TX 79120. Representative: Gailyn L. Larsen, P.O. Box 82816, Lincoln, NE 68501. Transporting *foodstuffs,* (except commodities in bulk), from New Orleans, LA, to points in the United States (except AK and HI). (Hearing site: New Orleans, LA, or Dallas, TX.)

Note.—Dual operations may be involved.

MC 135070 (Sub-148F), filed January 22, 1980. Applicant: JAY LINES, INC., P.O. Box 30180, Amarillo, TX 79120. Representative: Gailyn L. Larsen, P.O. Box 82816, Lincoln, NE 68501. Transporting: *meats, meat products and meat byproducts, and articles distributed by meat packing houses* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766 (except commodities in bulk and hides), from the facilities of Royal Packing Company, at or near National Stockyards, IL, and St. Louis, MO, to points in AL, AZ, AR, CA, CO, FL, GA, ID, IL, IN, IA, KS, KY, LA, MA, MI, MN, MS, MO, MT, NE, NV, NM, NC, ND, OK, OR, SC, SD, TN, TX, UT, WA, WI, and WY. (Hearing site: E. St. Louis, IL or Dallas, TX.)

Note.—Dual operations are be involved.

MC 135231 (Sub-41F), filed December 26, 1979. Applicant: NORTH STAR TRANSPORT, INC., Rt. 1, Highway 1 and 59 West, Thief River Falls, MN 56701. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. Transporting (1) *cleaning and polishing compounds, textile softeners, lubricants, hypoclorite solution, deodorants, disinfectants, paints, stains, varnishes, plastic bags and filters* and (2)

materials, supplies and equipment used in the manufacture of the commodities named in (1) above, (except commodities in bulk) between the facilities of Economics Laboratory, Inc., at or near San Jose and City of Industry, CA; Detroit, MI; Joliet, IL; Beloit, WI; St. Paul, MN; Garland, TX; Hanover, PA; Woodbridge, Palisades Park and South Plainfield, NJ on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: St. Paul, MN.)

MC 136291 (Sub-20F), filed January 11, 1980. Applicant: CUSTOMIZED PARTS DISTRIBUTION, INC., (CPD, INC.), 3600 N.W. 82nd Avenue, Miami, FL 33166. Representative: Dale A. Tibbets (same address as applicant). *Contract carrier*, transporting *liquid argon, liquid nitrogen and liquid oxygen*, in shipper owned trailers, from Ecorse, MI, to points in IN, KY, OH, and PA on and west of U.S. Hwy 219, under continuing contract(s) with Union Carbide Corporation, of New York, NY. (Hearing site: Washington, DC or Miami, FL.)

MC 136291 (Sub-21F), filed January 11, 1980. Applicant: CUSTOMIZED PARTS DISTRIBUTION, INC., (CPD, INC.), 3600 N.W. 82nd Avenue, Miami, FL 33166. Representative: Dale A. Tibbets (same address as applicant). *Contract carrier*, transporting *liquid argon, liquid nitrogen and liquid oxygen*, in shipper owned trailers, from (1) Burns Harbor, East Chicago and Gary, IN to points in OH, MI, and KY, and (2) Ashtabula and Lorain, OH to points in MI, IN and KY, under continuing contract(s) with Union Carbide Corporation, of New York, NY. (Hearing site: Washington, DC or Miami, FL.)

MC 136771 (Sub-5F), filed January 2, 1980. Applicant: HY-WAY TRANSIT, INC., Route 1, Cedar Grove, WI 53013. Representative: Richard A. Westley, 4506 Regent St., Suite 100, Madison, WI 53705. *Contract carrier* transporting (1) *steel wire*, in coils, from Saukville, WI, to points in IL, IN, IA, MI, MN and OH, and (2) *steel billets*, in the reverse direction, under continuing contract(s) with Charter Rolling Division of Charter Manufacturing Company, Inc., of Saukville, WI. (Hearing site: Milwaukee, WI or Chicago, IL.)

MC 138181 (Sub-9F), filed January 18, 1980. Applicant: TRANSPORT EXPRESS, INC., Box 663, Dodge City, KS 67801. Representative: Clyde N. Christey, Kansas Credit Union Bldg., 1010 Tyler, Suite 110L, Topeka, KS 66612. Transporting *liquid fertilizer solutions* from points in Finney County, KS to points in CO, OK, and TX. (Kansas City, MO.)

MC 138510 (Sub-13F), filed February 6, 1980. Applicant: RICCI TRANSPORTATION CO., INC., Odessa Avenue and Aloe Street, Pomona, NJ 08240. Representative: Joseph F. Hoary, 121 South Main Street, Taylor, PA 18517. *Contract carrier* transporting *malt beverages*, in containers, from Albany, GA to Pleasantville and Wildwood, NJ under continuing contract(s) with South Jersey Distributors Co., Inc., of Pleasantville, NJ. (Hearing site: Philadelphia, PA.)

MC 141500 (Sub-11F), filed January 14, 1980. Applicant: SUPERIOR TRUCKING CO., INC., P.O. Box 35, Kewaskum, WI 53040. Representative: Richard C. Alexander, 710 North Plankinton Ave., Milwaukee, WI 53203. *Contract carrier*, transporting *coal*, from Ashland, Green Bay, Prairie du Chien, Sheboygan, and Superior, WI, to points in IL, IA, MN, and the Upper Peninsula of MI, under continuing contract(s) with The C. Reiss Coal Co., of Sheboygan, WI. (Hearing site: Milwaukee, WI.)

MC 141700 (Sub-2F), filed December 26, 1979. Applicant: KENNETH G. SCHUCK d.b.a. KENNETH SCHUCK TRUCKING, R.D. 8, Blue Barn Rd., Box 392, Allentown, PA 18104. Representative: Paul B. Kemmerer, 1620 N. 19th St., Allentown, PA 18104. *Contract carrier* transporting (1) *plastic pipe, plastic ducts, and plastic tubes*, (2) *fittings and attachments* for the commodities in (1) above, and (3) *materials and supplies* used in the installation of the commodities in (1) and (2) above (a) from the facilities of Carlon An Indian Head Company at Nazareth, PA, to points in DE and VT and (b) in the reverse direction under continuing contract(s) with Carlon An Indian Head Company of Nazareth, PA. (Hearing site: Allentown or Philadelphia, PA.)

MC 141981 (Sub-2F), filed October 3, 1979. Applicant: BATES TRUCK LINE, INC., 507 Slocum St., Lancaster, OH 43130. Representative: John L. Alden, 1396 West Fifth Ave., P.O. Box 12214, Columbus, OH 43212. Transporting (1) *such commodities* as are dealt in by manufacturers of glass, plastic, metal products and chinaware, and (2) *materials and supplies* used in *their manufacture*, between points in DC, IL, IN, KY, MD, OH, PA, and WV, restricted to the transportation of traffic originating at or destined to the facilities of or used by Anchor Hocking Corporation and its subsidiaries. (Hearing site: Columbus, OH, or Washington, DC.)

MC 142920 (Sub-5F), filed October 1, 1979. Applicant: OLIVER TRUCKING CORP., 2203 West Oliver St., Indianapolis, IN 46221. Representative: Morton E. Kiel, Suite 1832, 2 World Trade Center, New York, NY 10048. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of sound, communications, educational, and entertainment materials (except in bulk), (1) between points in CT, DE, NJ, NY, and PA, on the one hand, and, on the other, points in IL and IN and (2) between points in IL, on the one hand, and, on the other, points in IN under continuing contract(s) with RCA Corp. of Cherry Hill, NJ. (Hearing site: New York, NY.)

MC 142920 (Sub-14F), filed January 11, 1980. Applicant: OLIVER TRUCKING CORP., 2203 W. Oliver Street, Indianapolis, IN 46221. Representative: Morton E. Kiel, Suite 1832, 2 World Trade Center. *Contract carrier*, transporting *such commodities* as are dealt in or used by manufacturers and distributors of sound, communications, educational and entertainment materials (except in bulk), between points in GA and NC, on the one hand, and, on the other, points in CA, CT, IL, IN, NJ and NY, under continuing contract(s) with CBS, Inc. of New York, NY. (Hearing site: New York, NY.)

MC 143300 (Sub-3F), filed October 19, 1979. Applicant: J. C. WOOLDRIDGE, INC., Route 7, Box 43, Martinsville, VA 24112. Representative: Terrell C. Clark, P.O. Box 25, StanleyTown, VA 24168. Transporting (1) *new furniture, furniture parts, materials and supplies used in the manufacture of new furniture*, and *machinery*, from the Norfolk, VA to points in Henry County, VA, and (2) *new furniture*, from points in Henry and Smyth Counties, VA to the Norfolk, VA. (Hearing site: Roanoke, VA or Washington, DC.)

MC 143331 (Sub-15F), filed January 21, 1980. Applicant: FREIGHT TRAIN TRUCKING, INC., 4906 E. Compton Blvd., P.O. Box 817, Paramount, CA 90723. Representative: William J. Monheim, P.O. Box 1756, Whittier, CA 90609. *Contract carrier* transporting *insulating materials*, from Fruita, CO to points in TX, under continuing contract(s) with Pabco Insulation Division of Louisian Pacific Corporation, of Fruita, CO. (Hearing site: Los Angeles, CA.)

MC 143471 (Sub-22F), filed January 21, 1980. Applicant: DAKOTA PACIFIC TRANSPORT, INC., 308 West Blvd., Rapid City, SD 57701. Representative: J. Maurice Andren, 1734 Sheridan Lake Road, Rapid City, SD 57701. *Contract carrier* transporting *lumber and lumber products* (a) from points in AR, TX, OK, LA and MS to the facilities of Whitewood Post and Pole at

Whitewood, SD, and (b) from the facilities of Whitewood Post and Pole at Whitewood, SD to points in IA, MN, NS, MT, WI, WY and CO under continuing contract(s) with Whitewood Post and Pole Co., Inc., of Whitewood, SD. (Hearing site: Rapid City or Whitewood, SD.)

MC 144630 (Sub-40F), filed January 21, 1980. Applicant: STOOPS EXPRESS, INC., 2239 Malibu Court, Anderson, IN 46015. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. Transporting *such commodities as are dealt in by wholesale and retail grocery stores* (except in bulk), from Chicago, IL to points in IN and KY. (Hearing site: Indianapolis, IN, or Columbus, OH.)

MC 144821 (Sub-5F), filed January 2, 1980. Applicant: FREEDOM FREIGHTWAYS, INC., P.O. Box 5850, St. Louis, MO 63134. Representative: Ray Ellsworth (same address as applicant). Transporting *such materials and supplies* as are used in the manufacturing of paper cores and tubes from Rockton, IL to Louisiana, MO, restricted to the transportation of traffic originating at and destined to facilities utilized by Sonoco Products Co. (Hearing site: St. Louis, MO or Washington, DC.)

MC 144821 (Sub-7F), filed January 21, 1980. Applicant: FREEDOM FREIGHTWAYS, INC., P.O. Box 5850, St. Louis, MO 63134. Representative: Raymond Ellsworth (same address as applicant). Transporting *such commodities as are dealt in or used by automotive and truck service centers and retail or wholesale business houses,* between points in the United States (except AK and HI), restricted to the transportation of traffic originating at or destined to the facilities utilized by Texstar Automotive Distribution Group. (Hearing site: St. Louis, MO or Washington, DC.)

MC 145150 (Sub-11F), filed December 13, 1979. Applicant: HAYNES TRANSPORT CO. INC., P.O. Box 9, R.R. 2, Saline, KS 67401. Representative: Clyde N. Christey, Kansas Credit Union Bldg., 1010 Tyler, Suite 110L, Topeka, KS 66612. Transporting *liquid fertilizer solutions,* from points in Finney County, KS to points in CO, OK, and TX. (Hearing site: Kansas City MD.)

MC 145441 (Sub-91F), filed January 10, 1980. Applicant: A. C. B. TRUCKING, INC., P.O. Box 5130, No. Little Rock, AR 72119. Representative: Ralph E. Bradbury, (same address as applicant). Transporting *such commodities as are dealt in by wholesale retail discount and variety stores,* from points in the United States (except AK and HI), to the facilities of Wal-Mart Stores, Inc., at points in AR and TX. (Hearing site: Little Rock, AR or Tulsa, OK.)

MC 145481 (Sub-17F), filed January 18, 1980. Applicant: COYOTE TRUCK LINE, INC., 501 Sam Ralston Road, Lebanon, IN 46052. Representative: John T. Wirth, 2600 Energy Center One, 717 17th Street, Denver, CO 80202. Transporting *plastic articles,* from (1) Warren, PA, to Bound Brook, NJ, and (2) from Bound Brook, NJ, to the facilities of Eli Lilly and Company at Atlanta, GA, Indianapolis, IN, and Enfield, CT. (Hearing site: Indianapolis, IN.)

Note.—Dual operations may be involved.

MC 145541 (Sub-5F), filed October 1, 1979. Applicant: SUNWAY CORP., 118 W. Main St., Thomasville, NC 27360. Representative: William P. Farthing, Jr., 1100 Cameron-Brown Building, Charlotte, NC 28204. Transporting (1) *new furniture, and furniture parts* and (2) *materials* used in the manufacturing of new furniture, between points in Appomattox County, VA and those in Caldwell, Catawba, Davidson, Forsyth, and Guilford Counties, NC, on the one hand, and, on the other, points in CO, ID, MT, NV, NM, OR, UT, WA and WY. (Hearing site: Charlotte or Thomasville, NC.)

MC 145981 (Sub-22F), filed January 21, 1980. Applicant: ACE TRUCKING CO., INC., 1 Hackensack Ave., South Kearny, NJ 07032. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. Transporting *foodstuffs,* and *materials, equipment,* and *supplies* used in the manufacture and sale of foodstuffs (except commodities in bulk), between points in NJ, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: New York, NY or Washington, DC.)

MC 145981 (Sub-25F), filed November 9, 1979. Applicant: ACE TRUCKING CO., INC., 1 Hackensack Ave., South Kearny, NJ 07032. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. Transporting *chemicals and cleaning compounds* (except commodities in bulk), between points in NJ on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: New York, NY or Washington, DC.)

MC 145981 (Sub-26F), filed December 18, 1979. Applicant: ACE TRUCKING CO., INC., 1 Hackensack Ave., South Kearney, NJ 07032. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. Transporting (1) *paper and paper products,* and (2) *materials, equipment, and supplies* used in the manufacture and sale of paper and paper products (except commodities in bulk), between points in NJ on the one hand, and, on the other, points in CA, CT, ME, MD, MA, NH, NY, PA, RI, VA, and DC. (Hearing site: New York, NY or Washington, DC.)

MC 146730 (Sub-7F) filed January 24, 1980. Applicant: L & W TRANSPORTATION, INC., Route 3, Box 195, Sedalie, MO 65301. Representative: Charles J. Fain, 333 Madison Street, Jefferson City, MO 65101. Transporting *electrical switchgear, electrical transformers, electrical sub-stations, fencing material, iron steel articles, aluminum articles, shelter aisle switchgear, breaker sleds, bases, switching sleds, and installation equipment* between the facilities of Central Electric Manufacturing, at or near Fulton, MO, on the one hand, and on the other, points in the United States (except AK and HI). (Hearing site: Jefferson City or Fulton, MO.)

MC 147831 (Sub-19F), filed January 14, 1980. Applicant: CENTRAL STATES EXPRESS, INC., P.O. Box 2464, Jackson, TN 38301. Representative: Abraham A. Diamond, 29 South La Salle Street, Chicago, IL 60603. Transporting *foodstuffs* (except in bulk), and *materials, equipment and supplies* used in the manufacture and distribution of foodstuffs, between the facilities of J. Hungerford Smith Co., Inc., at or near Humboldt, TN, on the one hand, and, on the other, points in the United States (except AK and HI.) (Hearing site: Jackson, TN.)

MC 148000 (Sub-4F), filed January 21, 1980. Applicant: C. H. DREDGE & CO., INC., 918 South 2000 West, Syracuse, UT 84041. Representative: Bruce W. Shand, 430 Judge Building, Salt Lake City, UT 84111. Transporting *plastic containers,* from the facilities of Trinadad Corporation at or near Las Vegas, NV, to Salt Lake City, UT. (Hearing site: Las Vegas, NV.)

MC 148161 (Sub-2F), filed January 7, 1980. Applicant: DANA TRUCKING, INC., P.O. Box 167, Wheelersburg, OH 45694. Representative: John M. Friedman, 2930 Putnam Avenue, Hurricane, WV 25526. *Contract carrier* transporting (1) *iron and steel articles* as described in Appendix V to the report in *Descriptions in Motor Carrier Certificates,* 61 MCC 209 766 and (2) *materials, supplies, and equipment* used in the manufacture and distribution of the commodities in (1) (except commodities in bulk) between Huntington, WV, on the one hand, and, on the other, points in the United States (except AK and HI) under continuing contract(s) with Connors Steel Co., of Huntington, WV. (Hearing site: Charleston, WV.)

MC 148351 (Sub-3F), filed December 26, 1979. Applicant: MANKE TRUCK LINE, INC., 2550 Boynton Lane, Reno, NV 89502. Representative: Robert G. Harrison, 4299 James Dr., Carson City, NV 89701. Transporting *insulation materials*, from points in Gleen and Riverside Counties, CA, to points in NV, ID, OR, WA and UT. (Hearing site: Reno, NV.)

MC 148421 (Sub-2F), filed January 21, 1980. Applicant: WHITEROCK HAULING, INC., 2808 Martin Luther King, Jr. Blvd., Columbus, GA 31906. Representative: Kenneth M. Henson, Jr., P.O. Box 2604, Columbus, GA 31902. Transporting (1) *sand, gravel, crushed stone, rock, fill dirt, and borrow pit materials*, between Fortson, Harris County, GA, on the one hand, and, on the other, points in Chambers, Russell, Lee, Macon, Barbour, Bullock, Houston, Dale, and Henry Counties, AL; (2) *sand and gravel* between points in Macon County, AL, on the one hand, and, on the other, points in Muscogee County, GA; (3) *lime* between points in Lee County, AL, on the one hand, and, on the other, points in Muscogee County, GA; (4) *lime* between points in Muscogee County, GA, on the one hand, and, on the other, points in Russell County, AL; (5) *lightweight aggregate materials* between points in Clay County, GA, on the one hand, and, on the other, points in Franklin, Gadsden, Liberty, Wakulla, Leon, Jefferson, Madison, Taylor, Hamilton, Suwanee, Lafayette, Columbia, Gulf, Bay, Calhoun, Jackson, Holmes, Washington, Walton, Okaloosa, Santa Rosa, and Escambia Counties, FL. (Hearing site: Atlanta, GA.)

MC 148620 (Sub-1F), filed January 14, 1980. Applicant: K. G. L. CONTRACTING SERVICES, INC., 2270 S. W. 36th St., Fort Lauderdale, FL 33312. Representative: John T. Bond, Suite 410, Hollywood Federal Bldg., 909 South State Road 7, Hollywood, FL 33023. *Contract carrier*, transporting (1) *commodities* (a) used in the operation and maintenance of clinical diagnostic laboratory instruments, and (b) used in the collection, preservation, and analysis of human laboratory specimens, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (a) and (b) (except commodities in bulk), in vehicles equipped with mechanical refrigeration, between the facilities of Coulter Diagnostics, at Hialeah, FL, on the one hand, and, on the other, points in the United States (except AK and HI), under continuing contracts(s) with Coulter Diagnostics, Division of Coulter Electronics, Inc., of Hialeah, FL. (Hearing site: Miami, FL.)

MC 148731 (Sub-1F), filed January 7, 1980. Applicant: MINKEVITCH TRUCKING & HAULING, INC., 1217 Cross St., Ogden, UT 84404. Representative: Fred J. Minkevitch Jr. (same address as applicant). *Contract carrier* transporting (1) *salt and salt products, and* (2) *materials and supplies* used in agricultural, water treatment, food processing, wholesale grocery, and institutional supply industries in mixed loads with commodities in (1) from the facilities of Lake Crystal Salt Co. at or near Saline, and Ogden, UT, to points in AZ, CA, CO, ID, MT, NE, NV, NM, OR, SD, UT, WA, and WY, under continuing contract(s) with Lake Crystal Salt Co., subsidiary of Processed Minerals Incorporated, of Hutchinson, KS. (Hearing site: Salt Lake City, UT, or Denver, CO.)

MC 148890 (Sub-2F), filed January 11, 1980. Applicant: SENTRY ARMORED COURIER CORP., 3548 Boston Road, Bronx, NY 10469. Representative: Ronald I. Shapss, 450 Seventh Avenue, New York, NY 10001. *Contract carrier*, transporting *coin and currency* between New York, NY, on the one hand, and, on the other, Culpeper, VA, Philadelphia, PA, Boston, MA, and points in Sussex, Warren, Hunterdon, Mercer, Monmouth, Salem, Middlesex, Somerset, Morris, Passaic, and Bergen Counties, NJ, under continuing contract(s) with the Federal Reserve Bank of New York, of New York, NY. (Hearing site: New York, NY.)

MC 148930F, filed January 22, 1980. Applicant: AERO DELIVERIERS, INC., 529 Gidley Drive, P.O. Box 416, Grand Haven, MI 49417. Representative: Edward Malinzak, 900 Old Kent Bldg., Grand Rapids, MI 49503. *Contract carrier*, transporting *brushes, household and industrial compounds, mops, and toilet preparations*, between the facilities of Fuller Brush Company, at Great Bend, KS, on the one hand, and, on the other hand, points in ND, SD and MI, under continuing contract(s) with Fuller Brush Company, of Great Bend, KS. (Hearing site: Lansing, MI, or Chicago, IL.)

MC 149161 (Sub-1F), filed January 2, 1980. Applicant: FOREST PARK AND MAIN STREET WRECKERS, INC., 5013 Courtney Dr., Forest Park, GA 30050. Representative: John J. Capo, P.O. Box 720434, Atlanta, GA 30328. Transporting: *wrecked and disabled trucks; wrecked and disabled tractors; and wrecked and disabled trailers and replacement vehicles;* (1) from points in FL, AL, MS, KY, TN, NC, SC, and VA to Atlanta, GA; and (2) from Atlanta, GA to points in FL, AL, MS, KY, TN, NC, SC, and VA. (Hearing site: Atlanta, GA.)

MC 149170 (Sub-1F), filed January 2, 1980. Applicant: ACTION CARRIER, INC., 1000 East 41st Street, Sioux Falls, SD 57105. Representative: Carl L. Steiner, 39 South LaSalle St., Chicago, IL 60604. Transporting: (1) *electric ranges and microwave ovens, and parts and accessories* from Minneapolis, MN, and Sioux Falls, SD, to points in the United States, (except AK and HI) and (2) *Commodities* used in the manufacture, sale and distribution of (1) above, (except commodities in bulk) from points in the United States, (except AK and HI) to Minneapolis, MN, and Sioux Falls, SD, restricted to traffic originating at or destined to Litton Microwave Cooking in Minneapolis, MN, and Sioux Falls, SD. (Hearing site: Chicago, IL.)

Note.—Common control may be involved.

MC 149290F, filed January 14, 1980. Applicant: GARY G. BUNDAY, d.b.a. GARY BUNDAY TRUCKING, 1710 Terrace Avenue, Bozeman, MT 59715. Representative: Steven K. Kuhlmann, 2600 Energy Center One, 717 17th Street, Denver, CO 80202. Transporting *oil burning lamps and lamp oil* (except in bulk in tank vehicles) from the facilities of Holliwick Incorporated at or near Manlius, NY, to points in CA, OR, and WA. (Hearing site: New York, NY.)

MC 149291F, filed January 15, 1980. Applicant: WILEY BROS., R.R. 2, Tottenham, Ontario, Canada LOG1WO. Representative: Thomas F. X. Foley, State Highway 34, Colts Neck, NJ 07722. *Contract carrier* transporting *wheat byproducts* between the port of entry on the international boundary line between Canada and the United States at St. Clair, MI, points in MI, and NY, on the one hand, and, on the other Battle Creek, MI, Chicago, IL, and Minneapolis, MN under continuing contract(s) with Hayhoe Mills, Ltd. of Ontario, Canada. (Hearing site: Buffalo, NY.)

MC 149310F, filed January 23, 1980. Applicant: JERRY NEWMAN & SON LTD., R.R. 1, Cottam, Ontario, Canada NOR 1B0. Representative: S. Harrison Kahn, Suite 733 Investment Bldg., Washington, DC 20005. Transporting *food and vegetable wastes, soybean meal, dried distiller's grain and apple and tomato pumice*, from the port of entry on the international boundary line between the United States at Detroit, MI, to points in that part of MI on and within a line running on the south over the MI–OH–IN state boundary lines, on the west over MI Hwy 27 and on the north over MI Hwy 10 to its junction with MI Hwy 25, then over MI Hwy 25 to its junction with MI Hwy 29, and then

over Hwy 94 to the port of entry at Detroit, MI. (Hearing site: Detroit, MI.)

MC 149311F, filed January 24, 1980. Applicant: RADFORD TRANS., INC., Oceana Way, Norwood, MA 02062. Representative: Frederick T. O'Sullivan, P.O. Box 2184, Peabody, MA 01960. *Contract carrier* transporting (1) *such commodities* as are dealt in by manufacturers of photographic devices and film and supplies and (2) *materials and equipment* used in the manufacture and distribution of commodities in (1) (except commodities in bulk, in tank vehicles), between points in MA, on the one hand, and, on the other, points in ME, NH, VT, RI, CT, NY, and NJ, under continuing contract(s) with Polaroid Corporation, of Needham Heights, MA. (Hearing site: Boston, MA.)

MC 149350F, filed February 15, 1979. Applicant: GOPHER FREIGHT LINES, INC., 1931 East 27th St., Vernon, CA 90058. Representative: David P. Christianson, 707 Wilshire Blvd., Suite 1800, Los Angeles, CA 90017. Transporting *general commodities* (except classes A and B explosives, articles of unusual value, household goods as defined by the Commission, commodities in bulk, and commodities which require special equipment) between points in CA. (Hearing site: Los Angeles, CA.)

Passengers

MC 134981 (Sub-2F), filed January 22, 1980. Applicant: THE HUDSON BUS TRANSPORTATION CO., INC., 437 Tonnele Avenue, Jersey City, NJ 07306. Representative: W. C. Mitchell, 370 Lexington Avenue, New York, NY 10017. *Contract carrier,* transporting *passengers and their baggage, in the same vehicle with passengers,* in charter operations beginning and ending at points in Bergen and Hudson Counties, NJ, Nassau County, NY, and New Rochelle, NY, Bridgeport, Hartford, Meriden, Middletown, New Haven and Stamford, CT, and Springfield, MA, and extending to points in the U.S. (excluding AK but excluding HI) under continuing contract(s) with Parker Tours, Inc., of New York, NY. (Hearing site: New York, NY, or Newark, NJ.)

Note.—Dual operations are involved.

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Decided: February 28, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce and Jones.

MC 200 (Sub-438F), filed January 10, 1980. Applicant: RISS INTERNATIONAL CORP., 903 Grand Avenue, Kansas City, MO 64106. Representative: H. Lynn Davis (same address as applicant). Over regular routes, transporting *general commodities* (except articles of unusual value, classes A & B explosives, household goods as described by the Commission, commodities in bulk, and those requiring special equipment), (1) beteen Louisville, KY, and Atlanta, GA, from Louisville, over Interstate Hwy 65 to Nashville, TN, then over Interstate Hwy 24 to junction Interstate 59, then over Interstate Hwy 59 to Chattanooga, TN, then over Interstate Hwy 75 to Atlanta, GA, and return over the same route; (2) between St. Louis, MO, and Atlanta, GA, from St. Louis, over Interstate Hwy 64 to junction Interstate Hwy 57, then over Interstate Hwy 57 to junction Interstate Hwy 24, then over Interstate Hwy 24 to junction U.S. Hwy 68, then over U.S. Hwy 68 (or Interstate Hwy 24 when this segment is completed) to junction Interstate Hwy 24, then over Interstate Hwy 24 to junction Interstate Hwy 59, then over Interstate Hwy 59 to Chattanooga, TN, then over Interstate Hwy 75 to Atlanta, and return over the same route; (3) between Louisville, KY, and Montgomery, AL, from Louisville, over Interstate Hwy 65 to junction U.S. Hwy 31, then over U.S. Hwy 31 (or Interstate Hwy 65 when this segment is completed), to junction Interstate Hwy 65, then over Interstate Hwy 65 to Montgomery, and return over the same route; (4) between St. Louis, MO, and Montgomery, AL, from St. Louis, over Interstate Hwy 64 to junction Interstate Hwy 57, then over Interstate Hwy 57 to junction Interstate Hwy 24, then over Interstate Hwy 24 to junction U.S. Hwy 68, then over U.S. Hwy 68 (or Interstate Hwy 24 when this segment is completed) to junction Interstate Hwy 24, then over Interstate Hwy 24 to Nashville, TN, then over Interstate Hwy 65 to junction U.S. Hwy 31, then over U.S. Hwy 31 (or Interstate Hwy 65 when this segment is completed) to junction Interstate Hwy 65, then over Interstate Hwy 65 to Montgomery, and return over the same route; (5) between St. Louis, MO and New Orleans, LA, from St. Louis over Interstate Hwy 55 to junction U.S. Hwy 52, then over U.S. Hwy 51 (or Interstate Hwy 55 when this segment is completed) to junction Interstate Hwy 10, then over Interstate Hwy 10 to New Orleans, and return over the same route; (6) between Joplin, MO, and New Orleans, LA, from Joplin, over U.S. Hwy 71 to junction U.S. Hwy 190, then over U.S. Hwy 61, then over U.S. Hwy 61 to junction Interstate Hwy 10, then over Interstate Hwy 10 to New Orleans, and return over the same route; (7) between Dallas, TX, and New Orleans, LA, from Dallas, over Interstate Hwy 20 to junction U.S. Hwy 71, then over U.S. Hwy 71 to junction U.S. Hwy 190, then over U.S. Hwy 190 to junction U.S. Hwy 61, then over U.S. Hwy 61 to junction Interstate Hwy 10, then over Interstate Hwy 10 to New Orleans, and return over the same route. *Restriction:* Operations over the 7 routes described above are restricted against service at any intermediate points, and no service is authorized between the termini except for the purpose of interline only. (Hearing site: Kansas City, MO.)

MC 720 (Sub-76F), filed February 4, 1980. Applicant: BIRD TRUCKING CO., INC., P.O. Box 227, Waupun, WI 53963. Representative: Tom Westerman (same address as applicant). Transporting *such commodities* as are dealt in by food stores, drug stores, hospitals, and cosmetic dealers, discount and variety stores, and grocery houses (except in bulk), from the facilities used by Bristol-Myers Company at Chicago, IL to Minneapolis, MN. Restricted to the transportation of traffic originating at the named origin. (Hearing site: Chicago, IL, or Milwaukee, WI.)

MC 730 (Sub-485F), filed January 10, 1980. Applicant: PACIFIC INTERMOUNTAIN EXPRESS CO., a corporation, 25 North Via Monte, Walnut Creek, CA 94598. Representative: R. N. Cooledge (same address as applicant). Transporting *petroleum products,* in bulk, in tank vehicles, from points in CA to points in OR and WA. (Hearing site: San Francisco, CA, or Los Angeles, CA.)

MC 730 (Sub-486F), filed January 10, 1980. Applicant: PACIFIC INTERMOUNTAIN EXPRESS CO., a corporation, 25 North Via Monte, Walnut Creek, CA 94598. Representative: R. N. Cooledge (same address as applicant). Transporting *alcohol,* in bulk, in tank vehicles, from Bellingham, WA, to points in the United States (except AK and HI). (Hearing site: Seattle, WA, or Portland, OR.)

MC 730 (Sub-487F), filed January 10, 1980. Applicant: PACIFIC INTERMOUNTAIN EXPRESS CO., a corporation, 25 North Via Monte, Walnut Creek, CA 94598. Representative: R. N. Cooledge (same address as applicant). Transporting *petroleum products,* in bulk, in tank vehicles, from New Orleans, LA to points in CA. (Hearing site: San Francisco, CA, or Los Angeles, CA.)

MC 730 (Sub-491F), filed February 8, 1980. Applicant: PACIFIC INTERMOUNTAIN EXPRESS CO., a corporation, 25 North Via Monte, Walnut Creek, CA 94598. Representative: R.N Cooledge (same addresse as applicant). Transporting *chemicals,* in bulk, from Casper, WY to points in AZ, CA, CO, ID, MT, NV, NM,

OR, ND, UT, WA, and WY. (Hearing site: Salt Lake City, UT, or Chicago, IL.)

MC 941 (Sub-7F), filed February 19, 1980. Applicant: McCRACKEN BROS. MOTOR FREIGHT, INC., 3147 N.W., Front Ave., Portland, OR 97210. Representative: Robert R. Hollis, 400 Pacific Bldg., Portland, OR 97204. Over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Eugene, OR and the junction of the OR-CA State line and Interstate Hwy 5, over Interstate Hwy 5, serving all intermediate points in Douglas County and intermediate and off-route points in Josephine and Jackson Counties, and between Eugene, OR, and Coos Bay, OR, via Interstate Hwy 5, or Hwy 38 and U.S. Hwy 101, serving intermediate and off-route points in Coos County. (Hearing site: Portland or Eugene, OR)

MC 1041 (Sub-2E), filed January 9, 1980. Applicant: B. N. CORKUM TRANSPORTATION CO., a corporation, 326 Ballardville Street, Wilmington, MA 01887. Representative: Frank J. Weiner, 15 Court Square, Boston, MA 02108. Transporting (1) *such commodities as are dealt in by grocery and food business houses and retail and discount department stores* (except commodities in bulk), from Andover, Lawrence, and Wilmington, MA, to points in ME, and (2) *paper and paper products,* from Winslow and Westbrook, ME, to points in MA. (Hearing site: Boston, MA)

MC 3281 (Sub-16F), filed January 3, 1980. Applicant: Powell Truck Line, Inc., 800 S. Main Street, Searcy, AR 72413. Representative: A. Doyle Cloud, Jr., 2008 Clark Tower, 5100 Poplar Avenue, Memphis, TN 38137. Transporting *hydraulic pumps, hydraulic cylinders, and machinery and equipment related thereto,* between Benton, AR and Memphis, TN. (Hearing site: Searcy, AR or Memphis, TN.)

MC 3581 (Sub-24F), filed February 19, 1980. Applicant: THE MOTOR CONVOY, INC., 2175 Parklake Drive, N.E., Suite 107, Atlanta, GA 30345. Representative: K. Edward Wolcott, P.O. Box 872, Atlanta, GA 30301. Transporting *passenger automobiles and trucks* in Springfield, OH, to points in the U.S. (except AK and HI). (Hearing Site: Chicago, IL.)

MC 5470 (Sub-212F), filed January 8, 1980. Applicant: TAJON, INC., R.D. 5, Mercer, PA 16137. Representative: Brian L. Trioano, 918 16th St. NW., Washington, DC 20006. Transporting *direct reduced iron,* in dump vehicles, (1) between ports of entry in ME, NH, MA, RI, CT, NY, PA, DE, MD, DC, VA, NC, SC, GA, NJ, FL, AL, MS, LA, and TX, on the one hand, and, on the other, points in the United States (except AK and HI), and (2) between Coatesville, PA, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Washington, DC, or Philadelphia, PA.)

MC 11220 (Sub-194F), filed January 8, 1980. Applicant: GORDONS TRANSPORTS, INC., 185 West McLemore Avenue, Memphis, TN 38101. Representative: James J. Emigh, P.O. Box 59, Memphis, TN 38101. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving Cottondale, Moundville, and Tuscaloosa, AL, as an off-points in connection with carrier's authorized regular route operations from and to Birmingham, AL. (Hearing site: Birmingham, AL.)

MC 11220 (Sub-196F), filed January 23, 1980. Applicant: GORDONS TRANSPORTS, INC., 185 West McLemore Avenue, Memphis, TN 38101. Representative: James J. Emigh, P.O. Box 59, Memphis, TN 38101.Transporting (1) *non ferrous metals* from the facilities of ASARCO Incorporated and Federated Metals Corporation, subsidiary of ASARCO Incorporated, at or near (a) Amarillo, Corpus Christi, and Houston, TX; (b) Omaha, NE; (c) Glover, MO; (d) Sand Springs, OK; (e) Whiting, IN; (f) Newark and Trenton, NJ; (g) San Francisco, CA; (h) Hillsboro, IL; and (i) Columbus, OH to points in the U.S. (except AK and HI); and (2) *materials and supplies* used in the manufacture and distribution of non ferrous metals in the reverse direction, restricted to the transportation of shipments originating at or destined to the named facilities. (Hearing site: St. Louis, MO.)

MC 11220 (Sub-197F), filed January 23, 1980. Applicant: GORDONS TRANSPORTS, INC., 185 West McLemore Avenue, Memphis, TN 38101. Representative: James J. Emigh, P.O. Box 59, Memphis, TN 38101. Transporting *cement pipe and fittings for cement pipe* from the facilities of Cement Asbestos Products Company (subsidiary of ASARCO Incorporated), at or near Ragland, AL, to those points in the U.S. in and east of MN, IA, MO, AR, and TX. (Hearing site: St. Louis, MO.)

Note.—The authority sought could be joined with applicant's regular route authority at points in AR, MO and TX to serve presently authorized points in KS and OK.

MC 13471 (Sub-11F), filed January 8, 1980. Applicant: WILEY'S AUTO EXPRESS, INC., Oak Lane & Mac Dade Blvd., Glenolden, PA 19036. Representative: Fred E. Wiley, Jr. (same address as applicant). *Contract carrier* transporting (1) *petroleum products, in containers and articles used or sold in service stations* from Philadelphia, PA to points in OH, Morgantown, WV and New Martinsville, WV; and (2) *products, and used service station equipment* returned in the reverse direction under a continuing contract with Gulf Oil Co.—U.S. of Columbus, OH. (Hearing site: Columbus, OH, or Philadelphia, PA.)

MC 19311 (Sub-68F), filed January 17, 1980. Applicant: CENTRAL TRANSPORT, INC., 34200 Mound Road, Sterling Heights, MI 48077. Representative: Leonard R. Kofkin, 39 South LaSalle Street, Chicago, IL 60603. Over *regular* routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment), (1) between Janesville, WI, and Milwaukee, WI, from Milwaukee over WI Hwy 15 to junction U.S. Hwy 14, then over U.S. Hwy 14 to Janesville, and return over the same route, serving no intermediate points, and (2) between South Beloit, IL, and Janesville, IL, over Interstate Hwy 90, serving no intermediate points. (Hearing site: Madison, WI, or Milwaukee, WI.)

MC 29910 (Sub-248F), filed January 10, 1980. Applicant: ARKANSAS–BEST FREIGHT SYSTEM, INC., 301 South 11th Street, Fort Smith, AR 72901. Representative: Don A. Smith, P.O. Box 43, 510 North Greenwood Avenue, Fort Smith, AR 72902. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of International Electric Corporation at or near San Marcos, TX, as an off-route point in connection with carrier's authorized regular-route operations between Dallas, TX, and San Antonio, TX. (Hearing site: Dallas, TX, or Washington, DC.)

Note.—Applicant intends to tack this authority.

MC 29910 (Sub-249F), filed January 7, 1980. Applicant: ARKANSAS–BEST FREIGHT SYSTEM, INC., 301 South 11th Street, Fort Smith, AR 72901. Representative: Don A. Smith, P.O. Box 43, 510 North Greenwood Avenue, Fort Smith, AR 72902. Transporting *general commodities* (except those of unusual

value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Ballanoff Home Products at or near Columbiana, OH, as an off-route point in connection with Carrier's authorized regular-route operations at Youngstown, OH. (Hearing site: Columbus, OH, or Washington, DC.)

Note.—Applicant intends to tack this authority.

MC 29910 (Sub-250F), filed January 23, 1980. Applicant: ARKANSAS–BEST FREIGHT SYSTEM, INC., 301 South 11th Street, Fort Smith, AR 72901. Representative: Don A. Smith, P.O. Box 43, 510 North Greenwood Avenue, Fort Smith, AK 72902. Transporting *buildings, building panels, building parts* and *materials, accessories* and *supplies* used in the installation and construction of buildings, building panels, and building parts between the facilities of Butler Manufacturing Company at San Marcos, TX, on the one hand, and, on the other, points in the United States (except AK and HI), restricted to the transportation of traffic originating at or destined to the facilities of Butler Manufacturing Company. (Hearing site: Dallas, TX, or Washington, DC.)

MC 35320 (Sub-482F), filed January 2, 1980. Applicant: T.I.M.E.–DC, INC., 2598 74th Street, P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of American Pipe & Supply Co., Inc., at or near Birmingham, AL, as an off-route point in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Birmingham, AL, or Washington, DC.)

Note.—Applicant intends to tack with existing authority.

MC 35320 (Sub-497F), filed January 3, 1980. Applicant: T.I.M.E.–DC, INC., 2598 74th Street, P.O. Box 2550, Lubbock, TX 79408l. Representative: Kenneth G. Thomas (same address as applicant). Transporting *general commodities,* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, Commodities in bulk, and those requiring special equipment), serving the facilities of Rockwell International Corp, at or near New Castle, PA, as an off-route point in connection with carrier's otherwise authorized regular route operations. (Hearing site: Cleveland, OH, or Washington, DC.)

Note.—Applicant intends to tack to its existing authority.

MC 35320 (Sub-498F), filed January 3, 1980. Applicant: T.I.M.E.–DC, INC., 2598 74th Street, P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Jaxton Manufacturing Corp. at or near Glens Falls, NY as an off-route point in connection with carrier's otherwise authorized regular route operations. (Hearing site: Albany, NY or Washington, DC.)

Note.—Applicant intends to tack to its existing authority.

MC 35320 (Sub-499F), filed January 3, 1980. Applicant: T.I.M.E.–DC, INC., 2598 74th Street, P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Decatur Ford Tractor, Inc. at or near Decatur, AL, as an off-route point in connection with carrier's otherwise authorized regular route operations. (Hearing site: Chattanooga, TN or Washington, DC.)

Note.—Applicant intends to tack to its existing authority.

MC 35320 (Sub-500F), filed January 3, 1980. Applicant: T.I.M.E.–DC, INC., 2598 74th Street, P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of The Shoe Den at or near Huntsville, AL, as an off-route point in connection with carrier's otherwise authorized regular route operations. (Hearing site: Chattanooga, TN or Washington, DC.)

Note.—Applicant intends to tack to its existing authority.

MC 35320 (Sub-501F), filed January 3, 1980. Applicant: T.I.M.E.–DC, INC., 2598 74th Street, P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Utility Supply of America, Inc. at or near Huntsville, AL, as an off-route point in connection with carrier's otherwise authorized regular route operations. (Hearing site: Chattanooga, TN or Washington, DC.)

Note.—Applicant intends to tack to its existing authority.

MC 35320 (Sub-519F), filed January 10, 1980. Applicant: T.I.M.E.–DC, INC., 2598 74th Street, P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of the Cullman Supply Co., at or near Cullman, AL, as an off-route point in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Chattanooga, TN, or Atlanta, GA.)

Note.—Applicant intends to tack with its existing authority.

MC 35320 (Sub-520F), filed January 8, 1980. Applicant: T.I.M.E.–DC, Inc., 2598 74th Street, P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Transporting *general commodities,* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Owens-Corning Fiberglas Corp. at or near Huntsville, AL, as an off-route point in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Chattanooga, TN or Huntsville, AL.)

Note.—Applicant intends to tack to its existing authority.

MC 35320 (Sub-548F), filed February 6, 1980. Applicant: T.I.M.E.–DC, Inc., 2598 74th Street, P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Transporting *general commodities,* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Langs Sporting Goods at or near Auburn, Decatur, Huntsville, Muscle Shoals, Russellville and Tuscaloosa, AL, as of-route points in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Huntsville, AL or Atlanta, GA.)

Note.—Applicant intends to tack to its existing authority.

MC 35320 (Sub-549F), filed February 6, 1980. Applicant: T.I.M.E.-DC, Inc., 2598 74th Street, P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Transporting *general commodities*, (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Specialty Tubing Co. at or near Hungsville, AL, as an off-route point in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Huntsville, AL or Atlanta, GA.)

Note.—Applicant intends to tack to its existing authority.

MC 35320 (Sub-550F), filed February 6, 1980. Applicant: T.I.M.E.-DC, Inc., 2598 74th Street, P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Transporting *general commodities*, (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Litton UHS von Gal at or near Montgomery, AL, as an off-route point in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Montgomery, AL or Atlanta, GA.)

Note.—Applicant intends to tack to its existing authority.

MC 35320 (Sub-551F), filed February 6, 1980. Applicant: T.I.M.E.-DC, Inc., 2598 74th Street, P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Transporting *general commodities*, (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Dixie Bearings Inc. at or near Montgomery, AL, as an off-route point in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Montgomery, AL or Atlanta, GA.)

Note.—Applicant intends to tack to its existing authority.

MC 35320 (Sub-552F), filed February 6, 1980. Applicant: T.I.M.E.-DC, INC., 2598 74th Street, P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Transporting *general commodities*, (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of the Wittichen Supply Co. at or near Gadsden, AL, as an off-route point in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Chattanooga, TN or Washington, DC.)

Note.—Applicant intends to tack to its existing authority.

MC 35320 (Sub-553F), filed February 6, 1980. Applicant: T.I.M.E.-DC, INC., 2598 74th Street, P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Transporting *general commodities*, (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Long-Lewis Hardware Co. at or near Birmingham, AL as an off-route point in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Birmingham, AL or Atlanta, GA.)

Note.—Applicant intends to tack to its existing authority.

MC 35320 (Sub-554F), filed February 6, 1980. Applicant: T.I.M.E.-DC, INC., 2598 74th Street, P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Transporting *general commodities*, (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Riceland Foods Inc. at or near Stuttgart, AR, as an off-route point in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Little Rock, AR or Memphis, TN.)

Note.—Applicant intends to tack to its existing authority.

MC 35320 (Sub-555F), filed February 6, 1980. Applicant: T.I.M.E.-DC, INC., 2598 74th Street, P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Transporting *general commodities*, (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of The Nelson Paint Co. at or near Montgomery, AL, as an off-route point in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Montgomery, AL or Atlanta, GA.)

Note.—Applicant intends to tack to its existing authority.

MC 35320 (Sub-556F), filed February 6, 1980. Applicant: T.I.M.E.-DC, INC., 2598 74th Street, P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Transporting *general commodities*, (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of the True-Line Manufacturing Co. at or near Decatur, AL, as an off-route point in connection with carrier's otherwise authorized regular route operations. (Hearing site: Chattanooga, TN or Washington, DC.)

Note.—Applicant intends to tack to its existing authority.

MC 53841 (Sub-39F), filed January 17, 1980. Applicant: W. H. CHRISTIE & SONS, INC., Box 517, East State Street, Knox, PA 16232. Representative: John A. Pillar, 1500 Bank Tower, 307 Fourth Avenue, Pittsburgh, PA 15222. Transporting *aluminum ingots and zinc alloy ingots* from Maple Heights, OH, to points in CT, IN, IL, NJ, NY, and PA. (Hearing site: Pittsburgh, PA, or Washington, DC.)

MC 56270 (Sub-36F), filed January 7, 1980. Applicant: LEICHT TRANSFER & STORAGE CO., (a corporation), 1401–55 State Street, P.O. Box 2385, Green Bay, WI 54306. Representative: Dennis L. Sedlacek (same address as applicant). Transporting *iron or steel pipe, equipment, materials, and supplies used in the manufacture of iron and steel pipe* between Carrollton, GA, and East Troy, WI, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Madison, or Milwaukee, WI.)

MC 56640 (Sub-46F), filed February 14, 1980. Applicant: DELTA LINES, INC., 333 Hegenberger Road, Oakland, CA 94621. Representative: Donald E. Fernaays, 4040 East McDowell Road, Suite 320, Phoenix, AZ 85008. Transporting *foodstuffs, and materials, equipment and supplies* used in the manufacture and distribution of foodstuffs (except in bulk), from the facilities of Ocean Spray Cranberries, Inc. at or near Markham and Aberdeen, WA to points in CO, CA, UT, and AZ. (Hearing site: Seattle, WA or San Francisco, CA.)

MC 59241 (Sub-10F), filed January 22, 1980. Applicant: JOHN GIBBONS, INC., 650 Eddystone Avenue, Eddystone, PA 19013. Representative: Maxwell A. Howell, 1100 Investment Building, 1511 K Street, NW., Washington, DC 20005. Transporting *paper* and *paper products*,

between the facilities of Scott Paper Company at or near Philadelphia, PA, on the one hand, and, on the other, points in Sussex County, DE. (Hearing site: Philadelphia, PA or Washington, DC.)

MC 61401 (Sub-21F), filed February 8, 1980. Applicant: MARX TRUCK LINE, INC., 220 Lewis, Sioux City, IA 51101. Representative: Robert A. Wicsher, P.O. Box 417, Sioux City, IA 51102. Contract carrier transporting (1) *ceramic tile, acoustical tile, artificial turf, neoprene foam padding and floor coverings,* and (2) *materials and supplies* used in the installation, manufacture, and distribution of the commodities named in (1) above, from points in IL to Sioux City, IA, under a continuing contract(s) with Curry Floor and Acoustics, Inc., of South Sioux City, NE. (Hearing site: Omaha, NE or Chicago, IL.)

Note.—Dual operations may be involved.

MC 61401 (Sub-22F), filed February 8, 1980. Applicant: MARX TRUCK LINE, INC., 220 Lewis, Sioux City, IA 51101. Representative: Robert A. Wichser, P.O. Box 417, Sioux City, IA 51102. Authority sought to operate as a *contract carrier,* transporting *animal feed products* and *materials and supplies used in the manufacture and distribution* of animal feed products (except commodities in bulk, in tank vehicles), from points in IL to Sioux City, IA under a continuing contract(s) with Corn Belt Supply Company of Sioux City, IA. (Hearing site: Omaha, NE, or Chicago, IL.)

Note.—Dual operations may be involved.

MC 61440 (Sub-181F), filed January 7, 1980. Applicant: LEE WAY MOTOR FREIGHT, INC., 3401 N.W. 63rd Street, Oklahoma City, OK 73157. Representative: Richard H. Champlin, P.O. Box 12750, Oklahoma City, OK 73157. Transporting *general commodities* (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of General Tire & Rubber Co., at or near Macon, GA, as an off-route point in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Oklahoma City, OK.)

MC 75320 (Sub-224F), filed January 8, 1980. Applicant: CAMPBELL SIXTY-SIX EXPRESS, INC., P.O. Box 807, Springfield, MO 65801. Representative: John A. Crawford, P.O. Box 22567, Jackson, MS 39205. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), 1. Between Indianapolis, IN and Omaha, NE: From Indianapolis over Interstate Hwy 74 to its junction with Interstate Hwy 80 at or near Moline, IL, then over Interstate Hwy 80 to Omaha and return over the same route, serving Des Moines, IA as an intermediate point and serving the junction of Interstate Hwy 74 and IN Hwy 63 at or near Veedersburg, IN as a point of joinder only. 2. Between Terre Haute, IN and the junction of IN Hwy 63 and Interstate Hwy 74 at or near Veedersburg, IN: From Terre Haute over IN Hwy 63 to junction IN Hwy 63 and Interstate Hwy 74 at or near Veedersburg and return over the same route, serving the junction of IN Hwy 63 and Interstate Hwy 74 as a point of joinder only. (Hearing site: Indianapolis, IN, or Omaha, NE.)

Note.—Applicant intends to join the requested authority with authority in MC 75320 and that acquired in MC-F-12713 at common points of service in IN, IA, and NE.

MC 75830 (Sub-18F), filed January 4, 1980. Applicant: INTER-CITY TRANSPORT & MOTOR CO., INC., Liggett Addition, P.O. Box 88, Buckhannon, WV 26201. Representative: William A. Gray, 2310 Grant Building, Pittsburgh, PA 15219. Transporting *foodstuffs and materials used in the manufacture and sale of foodstuffs* (except commodities in bulk), between Bluffton, IN, on the one hand, and, on the other, points in CT, DE, MD, MA, NY, RI, VA, IL, MI, and DC under a continuing contract(s) with Keebler Company of Elmhurst, IL. (Hearing site: Pittsburgh, PA, or Washington, DC.)

MC 82841 (Sub-282F), filed February 8, 1980. Applicant: HUNT TRANSPORTATION, INC., 10770 "I" Street, Omaha, NE 68127. Representative: Donald L. Stern, 7171 Mercy Road, Suite 510, Omaha, NE 68106. Transporting *lumber* from the facilities of Hoover Universal Wood Preserving Division of Hoover Universal, Inc., at or near (1) Thomson, GA to points in IL, IN, OH, MI, PA, NY, WV, MD and DE; and (2) Milford, VA to those points in the US in and east of WI, IL, MO, OK and TX. (Hearing site: Atlanta, GA.)

MC 95540 (Sub-1155F), filed January 14, 1980. Applicant: WATKINS MOTOR LINES, INC., 1144 West Griffin Road, P.O. Box 1636, Lakeland, FL 33802. Representative: Benji W. Fincher (same address as applicant). Transporting (1) *solar collectors, air conditioners, air conditioning machinery, home heating furnaces, and parts and accessories* and (2) *such commodities* as are used in the manufacture and distribution of the commodities named in (1) above, between points in OH and IA, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Dallas, TX, or Washington, DC.)

MC 103490 (Sub-79F), filed January 7, 1980. Applicant: PROVAN TRANSPORT CORP., 210 Mill Street, Newburgh, NY 12550. Representative: Morton E. Kiel, Suite 1832, Two World Trade Center, New York, NY 10048. Transporting (1) *Chemicals* in bulk, in tank vehicles, from Groveland, MA to Macedonia, OH and Milford, CT and (2) *petrolatum* in bulk, in tank vehicles, from Warren, PA to Woburn, MA. (Hearing site: Boston, MA.)

Note.—Applicant holds contract carrier authority in MC 125709 therefore dual operations may be involved.

MC 105501 (Sub-42F), filed January 10, 1980. Applicant: TERMINAL WAREHOUSE CO., a corporation, 1851 Radisson Road, NE., Blaine, MN 55434. Representative: Samuel Rubenstein, P.O. Box 5, Minneapolis, MN 55440. Transporting *fumaric and malic acid, in containers,* from Duluth and Minneapolis, MN, to Grand Island, Norfolk and Ravenna, NE. (Hearing site: Minneapolis or St. Paul, MN.)

Note.—Dual operations may be involved.

MC 105881 (Sub-62F), filed January 8, 1980. Applicant: MR&R TRUCKING CO., a corporation, Box 100, Staunton, VA 24401. Representative: Francis W. McInerny, Suite 502, 1000 16th St., N.W., Washington, DC 20036. Transporting *general commodities* (except those of unusual value, household goods as defined by the Commission, classes A and B explosives, commodities in bulk, and those requiring special equipment), (1) between Atlanta, GA and Montgomery, AL, over Interstate Hwy 85 serving no intermediate points (2) between Birmingham, AL, and Marianna, FL, from Birmingham over U.S. Hwy 31 to Montgomery, AL then over U.S. Hwy 231 to its junction with FL Hwy 73, then over FL Hwy 73 to Marianna, and return over the same route serving all intermediate points and serving Ft. Rucker, AL, as an off-route point, (3) between Columbus, GA, and Montgomery, AL, over U.S. Hwy 80 serving all intermediate points, (4) between Mobile, AL, and Birmingham, AL and from Mobile over U.S. Hwy 43 to its junction with U.S. Hwy 11, then over U.S. Hwy 11 to Birmingham, and return over the same route serving no intermediate points, and (5) between Mobile, AL, and Montgomery, AL over U.S. Hwy 31 serving no intermediate points. (Hearing site: Montgomery or Birmingham, AL.)

Note.—Tacking is intended.

MC 106400 (Sub-123F), filed February 5, 1980. Applicant: KAW TRANSPORT

CO., a corporation, P.O. Box 8510, Sugar Creek, MO 64054. Representative: James C. Swearengen, P.O. Box 456, Jefferson City, MO 65102. Transporting *crude oil,* in bulk, in tank vehicles, from points in Richardson County, NE, to points in KS. (Hearing site: Kansas City, MO.)

MC 108380 (Sub-106F), filed January 10, 1980. Applicant: JOHNSTON'S FUEL LINERS, INC., Box 100, Newcastle, WY 86701. Representative: Truman A. Stockton, Jr., The 1650 Grant Street Building, Denver, CO 80203. Transporting *petroleum* from points in Dewey and Ziebach Counties, SD, to points in WY. (Hearing site: Casper, WY, or Denver, CO.)

MC 109891 (Sub-48F), filed January 4, 1980. Applicant: INFINGER TRANSPORTATION CO., INC., 2811 Carner Avenue, P.O. Box 70698, Charleston Heights, SC 29405. Representative: Frank B. Hand, Jr., P.O. Box Drawer C, Berryville, VA 22611. Transporting *petroleum products,* from Augusta, GA, to points in NC, SC, and TN. (Hearing site: Washington, DC, or Augusta, GA.)

MC 111310 (Sub-56F), filed January 8, 1980. Applicant: BEER TRANSIT, INC., Box 352, Black River Falls, WI 54615. Representative: Wayne W. Wilson, 150 East Gilman St., Madison, WI 53703. Transporting (1) *such commodities as are dealt in by wholesale, retail, and chain grocery and food business houses,* and (2) *equipment, materials and supplies used in the conduct of such business* (except in bulk), between points in AZ, AR, CA, CO, KS, MD, MO, MT, NE, OK, OR, TX, UT, VA, WA, and WI, restricted to traffic originating at or destined to the facilities used by Safeway Stores, Inc. (Hearing site: Madison, WI or Oakland, CA.)

MC 111310 (Sub-57F), filed February 5, 1980. Applicant: BEER TRANSIT, INC., P.O. Box 352, Black River Falls, WI 54615. Representative: Michael J. Wyngaard, 150 East Gilman Street, Madison, WI 53703. Transporting *paper and paper products* from points in WI to points in the U.S. (except AK and HI). (Hearing site: Madison or Milwaukee, WI.)

MC 111611 (Sub-46F), filed January 8, 1980. Applicant: NOERR MOTOR FREIGHT, INC. 205 Washington Avenue, Lewistown, PA 17044. Representative: John E. Fullerton, 407 N. Front St., Harrisburg, PA 17101. Transporting *speaker systems, loudspeakers, radio receiving sets, amplifiers, preamplifiers, and tuners,* from the facilities of Fisher Corp. at Milroy, PA to the facilities of Fisher Corp. at S. Plainfield, NJ. (Hearing site: Washington, DC.)

MC 111611 (Sub-47F), filed February 11, 1980. Applicant: NOERR MOTOR FREIGHT, INC., 205 Washington Avenue, Lewistown, PA 17044. Representative: William D. Taylor, 100 Pine Street, Suite 2550, San Francisco, CA 94111. Transporting (1) *fibrous glass materials and products;* (2) *fiberglass;* and (3) *materials and supplies* used in the manufacture of glass fiber products between points in the US (except HI and AK), restricted to the transportation of traffic originating at or destined to the facilities used by Owens-Corning Fiberglass Corporation. (Hearing site: San Francisco, CA, or Toledo, OH.)

MC 112851 (Sub-9f), filed January 17, 1980. Applicant: GEORGE B. REYNOLD d.b.a. REYNOLDS TRUCKING CO., R.R. 1, Crawfordsville, IN 47933. Representative: Alki E. Scopelitis, 1301 Merchants Plaza, Indianapolis, IN 46204. Transporting *clay products,* from Brazil, IN, to points in IL, MI, and KY. (Hearing site: Columbus, OH, or Indianapolis, IN.)

MC 113651 (Sub-326F), filed January 3, 1980. Applicant: INDIANA REFRIGERATOR LINES, INC., P.O. Box 552, Riggin Road, Muncie, IN 47305. Representative: Henry Higgs (same address as applicant). Transporting *such commodities* as are dealt in by producers and distributors of alcoholic beverages (1) from Fort Smith, AR, to those points in the United States in and east of ND, SD, NE, KS, OK, and TX, (2) from Bardstown and Louisville, KY, to points in AR, TN, IL, IN, IA, MI, OH, NY, PA, WV, NC, SC, GA, and FL, (3) from New Orleans, LA, to points in TX, OK, AR, GA, and FL, and (4) from Plainsfield, IL, to points in WI, MI, IN, MN, IA, MO, ND, SD, NE, KS, and OK, restricted to the transportation of traffic originating at the facilities of Hiram Walker & Sons, Inc., and destined to the indicated destinations. (Hearing site: Chicago, IL, or Washington, DC.)

MC 113651 (Sub-330F) filed February 15, 1980. Applicant: INDIANA REFRIGERATOR LINES, INC., P.O. Box 552, Riggin Road, Muncie, IN 47305. Representative: Henry Higgs (same address as applicant). Transporting *meats, meat products, by-products, and articles distributed by meat packinghouses,* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209, and 766 (except commodities in bulk), from Green Bay, WI, to points in IL, IN, KY, TN, MS, AL, FL, GA, SC, NC, VA, WV, MD, DE, NJ, NY, NH, VT, MA, PA, CT, ME, RI, OH and DC. (Hearing site: Chicago, IL, or Washington, DC.)

MC 114211 (Sub-435F), filed January 4, 1980. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, IA 50704. Representative: Kurt E. Vragel, Jr., (same address as applicant). Transporting *fabricated metal articles,* between West Des Moines, IA on the one hand, and, on the other, points in the U.S. (except AK and HI). (Hearing site: Des Moines, IA.)

MC 114211 (Sub-436F), filed January 8, 1980. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, IA 50704. Representative: Kurt E. Vragel, Jr. (same address as applicant). Transporting *materials and supplies used in the manufacture and distribution of cast iron products* (except commodities in bulk), from points in ME, NH, VT, MA, RI, CT, DE, SC, GA, FL, AL, MS, AR, LA, IA, NE, KS, SD, ND, MT, WY, CO, NM, AZ, UT, ID, NV, CA, WA, and OR, to points in Pottawattamie County, IA. (Hearing site: Chicago, IL.)

MC 114290 (Sub-100F), filed February 15, 1980. Applicant: EXLEY EXPRESS, INC., 2610 S.E. 8th Avenue, Portland, OR 97202. Representative: Nick I. Goyak, 555 Benjamin Franklin Plaza, One Southwest Columbia, Portland, OR 97258. Transporting *such commodities that are dealt in by a manufacturer of toilet articles and cosmetics* from the facilities of Avon Products, Inc., at or near Monrovia and Pasadena, CA, to points in ID, OR, UT and WA. (Hearing site: Portland, OR, or San Francisco, CA.)

MC 114890 (Sub-102F), filed January 2, 1980. Applicant: COMMERCIAL CARTAGE CO., a corporation, 343 Axminster Drive, Fenton, MO 63026. Representative: David A. Cherry, P.O. Box 1540, Edmond, OK 73034. Transporting *gasoline,* in bulk, in tank vehicles, from Wood River and East St. Louis, IL, to Wentzville, Cuba, and Jonesburg, MO. (Hearing site: St. Louis, MO, or Washington, DC.)

MC 114890 (Sub-103F), filed January 2, 1980. Applicant: COMMERCIAL CARTAGE CO., a corporation, 343 Axminster Drive, Fenton, MO 63026. Representative: David A. Cherry, P.O. Box 1540, Edmond, OK 73034. Transporting *hydrochloric acid,* in bulk, in tank vehicles, from St. Louis, MO, to points in IL, IA, MI, IN, and KY. (Hearing site: St. Louis, MO, or Evansville, IN.)

MC 115180 (Sub-101F), filed January 14, 1980. Applicant: ONLEY REFRIGERATED TRANSPORTATION, INC., 265 West 14th Street, New York, NY 10011. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. Transporting *foodstuffs,* from points in NJ, NY, and PA, to points in CA, CO, GA, IL, IN, IA, KS, KY, MI, MN,

MO, NE, ND, OH, SD, TX, and WI. (Hearing site: New York, NY, or Washington, DC.)

MC 115730 (Sub-81F), filed January 10, 1980. Applicant: THE MICKOW CORP., 531 Southwest Sixth Street, Des Moines, IA 50309. Representative: Cecil L. Goettsch, 1100 Des Moines Building, Des Moines, IA 50307. Transporting (1) *steel tubing* and (2) *hydraulic hoists and agricultural machinery*, (1) from Warren, OH, to the facilities of Hydraulics Unlimited Mfg. Co., at Eaton, CO, and (2) from Eaton, CO, to those points in the United States in and east of KS, ND, NE, OK, SD, and TX. (Hearing site: Denver CO.)

MC 115841 (Sub-752F), filed January 10, 1980. Applicant: COLONIAL REFRIGERATED TRANSPORTATION, INC., 9041 Executive Park Drive, suite 110, Building 100, Knoxville, TN 37919. Representative: D. R. Beeler (same address as applicant). Transporting (1) *foodstuffs* (except those embraced in (2) below), and (2) *meats, meat products, meat by-products and articles distributed by meat-packing houses*, from points in TX, to points in AL, AR, AZ, CA, DE, FL, GA, IA, IL, IN, KS, KY, MD, MO, MS, NC, NE, NJ, NV, NY, OH, OK, PA, SC, TN, VA, and WV. (Hearing site: San Antonio, TX, or Washington, DC.)

MC 115841 (Sub-753F), filed January 17, 1980. Applicant: COLONIAL REFRIGERATED TRANSPORTATION, INC., 9041 Executive Park Drive, suite 110, Building 100, Knoxville, TN 37919. Representative: D. R. Beeler (same address as applicant). Transporting *bakery goods* from Valdosta, GA, to points in KY, LA, NC, SC, and TX. (Hearing site: Atlanta, GA, or Washington, DC.)

MC 115931 (Sub-108F), filed February 8, 1980. Applicant: BEE LINE TRANSPORTATION, INC., P.O. Box 3987, Missoula, MT 59801. Representative: Gene P. Johnson, P.O. Box 2471, Fargo, ND 58108. Transporting (1) *agricultural machinery and implements*, and (2) *materials, equipment, and supplies* used in the distribution of the commodities in (1) above from Bethany, MO, to points in the U.S. (except AK and HI) restricted to the transportation of traffic originating at the facilities of United Farm Tools, Inc., Calhoun Division, at Bethany, MO. (Hearing site: Kansas City, MO.)

MC 116300 (Sub-75F), filed February 5, 1980. Applicant: NANCE & COLLUMS, INC., P.O. Drawer J, Fernwood, MS 39635. Representative: Harold D. Miller, Jr., 17th floor, Deposit Guaranty Plaza, P.O. Box 22567, Jackson, MS 39205. Transporting *granulated slag*, from Satsuma, AL to points in AR, FL, GA, KY, LA, MS and TN. (Hearing site: Mobile, AL.)

MC 117730 (Sub-76F), filed February 19, 1980. Applicant: KOUBENEC MOTOR SERVICE, INC., Route 47, Huntley, IL 60142. Representative: Stephen H. Loeb, Suite 2027, 33 North LaSalle Street, Chicago, IL 60602. Transporting *frozen foods*, (1) from the facilities of Continental Freezers of Illinois at Chicago, IL to points in CO, KS, MN, NE, and WI, and (2) from points in CO, IN, IA, KS, KY, MI, MN, MO, NE, NJ, NY, OH, PA, TX and WI to the facilities of Continental Freezers of Illinois at Chicago, IL, restricted in parts (1) and (2) to the transportation of traffic originating at the named origins and destined to the indicated destinations. (Hearing site: Chicago, IL.)

MC 117910 (Sub-7F), filed January 4, 1980. Applicant: W. H. FROH, INC., 57760 Main Boulevard, New Haven, MI 48048. Representative: Walter N. Bieneman, 100 West Long Lake Road, suite 102, Bloomfield Hills, MI 48013. *Contract carrier* transporting *material handling equipment, containers therefor, and equipment, materials and supplies* used in the manufacture thereof, between Port Huron, MI, on the one hand, and, on the other, points in the United States (except AK and HI) under a continuing contract(s) with Jervis B. Webb Company of Farmington Hills, MI. (Hearing site: Detroit, MI or Lansing, MI.)

MC 118130 (Sub-117F), filed February 15, 1980. Applicant: SOUTH EASTERN XPRESS, INC., P.O. Box 6459, Fort Worth, TX 76115. Representative: Billy R. Reid, 1721 Carl Street, Fort Worth, TX 76103. Transporting (1) *bananas, and agricultural commodities* otherwise exempt from economic regulations under 49 USC 10526(a)(6), when moving in mixed loads with bananas, from Charleston, SC, to points in the U.S. (except AK, HI, ME, NH, VT, MA, RI, NY, NJ, PA, MD, MI, DE, VA, WV, OH, IN and DC). (Hearing site: Fort Worth, TX or Charleston, SC.)

MC 118831 (Sub-192F), filed January 4, 1980. Applicant: CENTRAL TRANSPORT, INC., P.O. Box 7007, High Point, NC 27264. Representative: Ben H. Keller, III (same as applicant). Transporting *vegetable oils*, in bulk, in tank vehicles, from Weehawken and Guttenburg, NJ to NC, SC, and GA. (Hearing site: Washington, DC.)

MC 118831 (Sub-193F), filed January 4, 1980. Applicant: CENTRAL TRANSPORT, INC., P.O. Box 7007, High Point, NC 27264. Representative: Ben H. Keller, III (same as applicant). Transporting *chemicals*, in bulk, in tank or hopper type vehicles, from the plantsites if E.I. DuPont de Nemours & Co. at or near Victoria, Orange, Beaumont, LaPorte and Houston, TX to points in the United States (except AK and HI). (Hearing site: Washington, DC or Wilmington, DE.)

MC 119670 (Sub-55F), filed January 7, 1980. Applicant: THE VICTOR TRANSIT CORP., 5250 Este Avenue, Cincinnati, OH 45232. Representative: Robert H. Kinker, 314 West Main Street, P.O. Box 464, Frankfort, KY 40602. Transporting *such commodities* as are dealt in or used by manufacturers of paper and paper articles (except commodities in bulk or waste paper) between points in IL, IN, KY, MI, MO, OH, PA, VA, WV, and WI. (Hearing site: Cincinnati, OH.)

MC 119700 (Sub-66F), filed January 7, 1980. Applicant: STEEL HAULERS, INC., 306 Ewing Avenue, Kansas City, MO 64125. Representative: Frank W. Taylor, Jr., 1221 Baltimore Avenue, Suite 600, Kansas City, MO 64105. Transporting *iron and steel articles* between Framington, MO, on the one hand, and on the other, points in AR, IL, IN, IA, KS, KY, LA, MI, OK, TX, OH, MS, WI, MN, TN, CO, NE, ND, and SD. (Hearing site: St. Louis, or Kansas City, MO.)

MC 120310 (Sub-4F), filed January 3, 1980. Applicant: B & L TRUCK & TRANSFER CO., a corporation, 4366 East 26th Street., Los Angeles, CA 90023. Representative: R. Y. Schureman, 1545 Wilshire Boulevard, Los Angeles, CA 90017. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission commodities in bulk, and commodities requiring special equipment) (1) between Los Angeles and Indio, CA, over Interstate Hwy. 10, serving all intermediate points, (2) between Indio and Thermal, CA, over CA Hwy 111 serving all intermediate points, and (3) between junction Interstate Hwy 10 and CA Hwy 62, near Whitewater, CA, and Twentynine Palms, CA over CA Hwy 62 serving all intermediate points and the off-route point of Twentynine Palms Marine Corps Base. (Hearing site: Los Angeles, CA.)

MC 121470 (Sub-51F), filed January 17, 1980. Applicant: TANKSLEY TRANSFER CO., a corporation, 801 Cowan Street, Nashville, TN 37207. Representative: John M. Nader, 1600 Citizens Plaza, Louisville, KY 40202. Transporting *iron and steel articles*, from Chicago, IL, to points in AL, KY, and TN. (Hearing site: Chicago, IL.)

MC 123310 (Sub-21F), filed January 3, 1980. Applicant: DOUG ANDRUS

DISTRIBUTING INC., 1820 West Broadway, Idaho Falls, ID 83401. Representative: Timothy R. Stivers, P.O. Box 162, Boise, ID 83701. Transporting *lumber*, from points in OR, WA, MT, those in Bennewah, Bonner, Boundary, Kootenai, and Shoshone Counties, ID and those points in ID south of the southern boundary of Idaho County to points in UT. (Hearing site: Boise, ID.)

MC 124141 (Sub-35F), filed January 3, 1980. Applicant: JULIAN MARTIN, INC., P. O. Box 3348, Batesville, AR 72501. Representative: Timothy C. Miller, Suite 301, 1307 Dolley Madison Boulevard, McLean, VA 22101. Transporting *general commodities* (except commodities in bulk, used in household goods, articles of unusual value, classes A and B explosives and commodities which because of size and weight require special equipment) from points in the United States (except AK and HI) to points in Independence County, AR, restricted to traffic destined to Independence County, AR. (Hearing site: Little Rock, AR or Washington, DC.)

Note.—Dual operations may be involved.

MC 124141 (Sub-36F), filed January 4, 1980. Applicant: JULIAN MARTIN, INC., P. O. Box 3348, Batesville, AR 72501. Representative: Timothy C. Miller, Suite 301, 1307 Dolley Madison Boulevard, McLean, VA 22101. Transporting *wine and brandy* (except commodities in bulk) from points in CA to points in the United States (except AK and HI). (Hearing site: San Francisco, CA or Washington, DC.)

Note.—Dual operations may be involved.

MC 124170 (Sub-147F), filed January 10, 1980. Applicant: FROSTWAYS, INC., 3000 Chrysler Service Drive, Detroit, MI 48207. Representative: William J. Boyd, 2021 Midwest Road, Suite 205, Oak Brook, IL 60521. Transporting *(1) foodstuffs, and (2) such commodities* as are dealt in or used by restaurant and food business houses (except commmodities in bulk, in tank vehicles), from Baltimore, MD, and Brockton and Wollaston, MA, to Detroit, MI, Chicago, IL, Cleveland, OH, Los Angeles, CA, Dallas, TX, Atlanta, GA, Miami, FL, and Baltimore, MD, restricted to the transportation of traffic originating at facilities utilized by Howard Johnson's. (Hearing site: Boston, MA, or Washington, DC.)

MC 124211 (Sub-375F), filed January 14, 1980. Applicant: HILT TRUCK LINE, INC., P.O. Box 988, D.T.S., Omaha, NE 68101. Representative: Thomas L. Hilt (same address as applicant). Transporting (1) *alcoholic beverages*, and (2) *materials, equipment*, and *supplies*, used in the manufacture and distribution thereof, except in bulk, in tank vehicles, between Fort Smith, AR, Plainfield, IL, Bardstown, and Louisville, KY, and New Orleans, LA, on the one hand, and on the other, points in the United States (except AK and HI), restricted to the transportation of traffic originiating at or destined to the facilities of Hiram Walker & Sons, Inc. (Hearing site: Washington, DC.)

Note.—Dual operations may be involved.

MC 124821 (Sub-84F), filed February 11, 1980. Applicant: GILCHRIST TRUCKING, INC., 105 North Keyser Avenue, Old Forge, PA 18518. Representative: John W. Frame, Box 626, 2207 Old Gettysburg Road, Camp Hill, PA 17011. Transporting *paints caulking*, and *materials and supplies* used in the manufacture and distribution of paints and caulking between Scranton, PA and points in IL, MI, IN, OH, MD, and CA. (Hearing site: Harrisburg, PA.)

MC 124821 (Sub-85F), filed February 8, 1980. Applicant: GILCHRIST TRUCKING, INC., 105 North Keyser Avenue, Old Forge, PA 18518. Representative: John W. Frame, Box 626, 2207 Old Gettysburg Road, Camp Hill, PA 17011. Transporting *fibrous glass products and materials, mineral wool, mineral products and materials, insulated air ducts, insulating products and materials; glass fiber rovings, yarn and strands, glass fiber mats and mattings*, from the facilities of CertainTeed Corporation, IG, at or near (1) Mountaintop, PA, to points in ME, NH, VT, CT, MA, RI and NY; and (2) Williamstown Junction, NJ, to points in ME, NH, VT, CT, MA, RI, NY AND PA. (Hearing site: Harrisburg, PA.)

MC 127810 (Sub-4F), filed January 17, 1980. Applicant: SHERMAN & BODDIE, INC., P.O. Box 621, Oxford, NC 27565. Representative: K. Edward Wolcott, P.O. Box 56387, Atlanta, GA 30343. Transporting (1) *asphalt building materials*, and *materials, equipment* and *supplies utilized in their manufacture*, installation and distribution (except commodities in bulk and iron and steel articles) between points in Granville County, NC, on the one hand, and, on the other, points in FL, GA, KY, MD, PA, SC, TN, VA, WV, and DC, (2) *glass containers*, and *materials, equipment* and *supplies* utilized in their manufacture and distribution (except commodities in bulk) between points in Vance County, NC, on the one hand, and, on the other, points in DE, FL, GA, MD, NJ, PA, SC, TN, VA, and WV. (Hearing site: Charlotte, NC.)

MC 127840 (Sub-156F), filed January 3, 1980. Applicant: MONTGOMERY TANK LINES, INC., 17550 Fritz Drive, Lansing, IL 60438. Representative: William H. Towle, 180 North LaSalle Street, Chicago, IL 60061. Transporting *animal fats*, in bulk, in tank vehicles, from Rapid City, SD to Denver, Co. (Hearing site: Minneapolis, MN or Chicago, IL.)

MC 127840 (Sub-157F), filed January 2, 1980. Applicant: MONTGOMERY TANK LINES, INC., 17550 Fritz Drive, Lansing, IL 60601. Representative: William H. Towle, 180 North LaSalle, Street, Chicago, IL 60601. Transporting *tallow*, in bulk, in tank vehicles, from the facilities of Iowa Beef Processor, Inc. at or near Halcomb, KS, to points in the states of CO, NJ, MA, AZ, CA, UT, NM, NE, WY, TX, LA, OK, AR, TN, MO, IA, IL, IN, MN, WI, OH, PA. (Hearing site: Omaha, NE or Sioux City, IA.)

MC 128570 (Sub-20F), filed February 6, 1980. Applicant: BROOKS ARMORED CAR SERVICE, INC., 13 East 35th Street, Wilmington, DE 19802. Representative: James F. Flint, Suite 600, 1250 Connecticut Avenue, N.W., Washington, DC 20036. Transporting *currency*, between Atlanta, GA, Baltimore, MD, Birmingham, AL, Boston, MA, Buffalo and New York, NY, Charlotte, NC, Chicago, IL, Cincinnati, OH, Cleveland, OH, Coral Gables, and Jacksonville, FL, Culpeper and Richmond, VA, Dallas, El Paso, Houston, and San Antonio, TX, Denver, CO, Detroit, MI, Louisville, KY, Helena, MT, Kansas City and St. Louis, MO, Little Rock, AR, Los Angeles, and San Francisco, CA, Memphis and Nashville, TN, Minneapolis, MN, New Orleans, LA, Oklahoma City, OK, Omaha, NE, Philadelphia and Pittsburgh, PA, Portland, OR, Salt Lake City, UT, Seattle, WA, and DC. (Hearing site: Washington, DC.)

Note.—Dual operations may be involved.

MC 128951 (Sub-36F), filed January 9, 1980. Applicant: ROBERT H. DITTRICH d.b.a. BOB DITTRICH TRUCKING, 1000 North Frost Street, New Ulm, MN 56073. Representative: Rodney H. Jeffery (same address as applicant). Transporting (1) *feed and feed ingredients*, and (2) *grain soybean and seed products and by-products* (except commodities in bulk, in tank vehicles), from the facilities of Archer Daniels Midland Co. at or near Red Wing, MN, to points in MI, IN, and OK. (Hearing site: Minneapolis, or St. Paul, MN)

Note.—Dual operations may be involved.

MC 133160 (Sub-2F), filed January 10, 1980. Applicant: BEAMAN & LASSITER, INC., Norfolk International Airport, Norfolk, VA 23518. Representative: Michael A. Inman, Suite 211, Pembroke Four, Virginia Beach, VA 23462. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods, as defined by the Commission,

commodities in bulk, and those requiring special equipment, (1) between Norfolk International Airport (Norfolk, VA), Patrick Henry Airport (Newport News, VA), and Byrd International Airport (Richmond, VA), (2) between Washington National Airport (Gravelly Point, VA), Dulles International Airport (Loudoun County, VA), and Baltimore-Washington International Airport (Anne Arundel County, MD), (3) between Norfolk International Airport (Norfolk, VA), and Patrick Henry Airport (Newport News, VA), and Byrd International Airport (Richmond, VA), on the one hand, and, on the other, Washington National Airport (Gravelly Point, VA), Dulles International Airport (Loudoun County, VA), and Baltimore-Washington International Airport (Anne Arundel County, MD), restricted to the transportation of traffic having an immediately prior or subsequent movement by air. (Hearing site: Norfolk, VA.)

MC 133591 (Sub-91F), filed January 17, 1980. Applicant: WAYNE DANIEL TRUCK INC., P.O. Box 303, Mt. Vernon, MO 65712. Representative: A. J. Swanson, P.O. Box 1103, 226 N. Phillips Avenue, Sioux Falls, SD 57101. Transporting (1) *disposable diapers*, from East Camden, AR, to points in TX, and (2) *textile products*, from North Little Rock, AR, to points in NV. (Hearing site: Kansas City, MO, or New Brunswick, NJ.)

MC 134501 (Sub-73F), filed February 8, 1980. Applicant: INCORPORATED CARRIERS, LTD., P.O. Box 3128, Irving, TX 75061. Representative: T. M. Brown, P.O. Box 1540, Edmond, OK 73034. Transporting *commercial refrigeration equipment* (except that which because of size or weight requires the use of special equipment), from O'Fallon and Overland, MO, to points in the US (except AK and HI). (Hearing site: St. Louis, MO, or Washington, DC.)

MC 135070 (Sub-142F), filed January 2, 1980. Applicant: JAY LINES, INC., P.O. Box 30180, Amarillo, TX 79120. Representative: Gailyn L. Larsen, P.O. Box 82816. Lincoln, NE 68501. Transporting *such commodities as are used or dealt in by manufacturers and distributors of furniture and bedding products* (except commodities which, because of size or weight, require the use of special equipment and commodities fn bulk, in tank vehicles), between points in the United States (except AK and HI). (Hearing site: Joplin, MO or Dallas, TX)

Note.—Dual operations may be involved.

MC 135070 (Sub-143F), filed January 7, 1980. Applicant: JAY LINES, INC., P.O. Box 30180, Amarillo, TX 79120. Representative: Gailyn L. Larsen, P.O. Box 82816, Lincoln, NE 68501. Transporting *unexposed photographic color paper and film* and *video and audio tape* and *microfilm* from Carlstadt, NJ, and Los Angeles, CA to points in CA, FL, GA, IL, NJ, NC, and TX. (Hearing site: New York, NY or Dallas, TX.)

Note.—Dual operations may be involved.

MC 135070 (Sub-144F), filed January 7, 1980. Applicant: JAY LINES, INC., P.O. Box 30180, Amarillo, TX 79120. Representative: Gailyn L. Larsen, P.O. Box 82816, Lincoln, NE 68501. Transporting *foodstuffs*, (a) from the facilities of Gentry Foods, Inc., at or near Gilroy, CA, to Irving, TX; (b) from the facilities of Foremost Foods, a Division of Foremost-McKesson, Inc., at or near Willows, CA, to Ft. Worth, TX, and Shreveport, LA; and (c) from the facilities of Foremost Foods, a Division of Foremost-McKesson, Inc., at or near Los Banos, CA to Dallas, TX. (Hearing site: San Francisco, CA, or Dallas, TX.)

Note.—Dual operations may be involved.

MC 135070 (Sub-145F), filed January 8, 1980. Applicant: JAY LINES, INC., P.O. Box 30180, Amarillo, TX 79120. Representative: Gailyn L. Larsen, P.O. Box 82816, Lincoln, NE 68501. Transporting *meats, meat products and meat by-products, and articles distributed by meat packinghouses*, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the facilities of Wilson Foods Corporation, at or near (1) Albert Lea, MN, (2) Cedar Rapids, Cherokee and Des Moines, IA, and (3) Marshall, MO, to points in LA, NM, OK, and TX, restricted to the transportation of traffic originating at the above-named origins and destined to the named destinations. (Hearing site: Dallas, TX, or Kansas City, MO.)

Note.—Dual operations may be involved.

MC 135070 (Sub-152F), filed February 19, 1980. Applicant: JAY LINES, INC., P.O. Box 30180, Amarillo, TX 79120. Representative: Gailyn L. Larsen, P.O. Box 82816, Lincoln, NE 68501. Transporting *confectionery*, in vehicles equipped with mechanical refrigeration, from the facilities of M&M/Mars, Division of Mars, Inc., at or near Waco, TX, to points in the United States (except AK and HI). (Hearing site: New York City, NY, or Dallas, TX.)

Note.—Dual operations may be involved.

MC 135410 (Sub-99F), filed January 17, 1980. Applicant: COURTNEY J. MUNSON, d.b.a. MUNSON TRUCKING, P.O. Box 266, Monmouth, IL 61462. Representative: Jack H. Blanshan, Suite 200, 205 West Touhy Avenue, Park Ridge, IL 60068. Transporting *meats, meat products, meat by-products and articles distributed by meat-packing houses* (except hides and commodities in bulk), as defined in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, from the facilities of Wilson Foods Corporation at (1) Omaha, NE, to points in IL, IN, MI, and OH, and (2) Cedar Rapids, IA, to points in IL, restricted to the transportation of traffic originating at the named origins and destined to the indicated destinations. (Hearing site: Dallas, TX, or Kansas City, MO.)

MC 135691 (Sub-41F), filed January 8, 1980. Applicant: DALLAS CARRIERS CORP., P.O. Box 402626, Dallas, TX 75240. Representative: J. Max Harding, P.O. Box 82028, Lincoln, NE 68501. *Contract carrier* transporting *materials, supplies and equipment* (except commodities in bulk) used in the manufacture and distribution of drugs, toilet preparations, diagnostic materials, chemicals, animal feed supplements, sugar, citric acid, and xylitol, from points in the US (except AK and HI) to Nutley, Belvidere, Branchburg, Clifton and Totowa, NJ, Salisbury, MD, Ames, IA, Fort Worth and Freeport, TX, and Fresno, CA, under a continuing contract(s) with Hoffmann-LaRoche, Inc., of Nutley, NJ. (Hearing site: Dallas, TX.)

MC 135811 (Sub-18F), filed January 17, 1980. Applicant: GARDNER TRUCKING CO., INC., P.O. Drawer 493, Walterboro, SC 29488. Representative: Steven W. Gardner (same address as applicant). *Contract carrier*, transporting *such commodities* as are dealt in or used by manufacturers and dealers of welding products, (1) from Baltimore, MD, Troy, OH, Hanover, PA, Monticello, IN, and Chicago, IL, to points in AL, AR, AZ, FL, GA, MS, NM, LA, OK, and TX, and (2) between Dallas, TX, and Gulfport, MS, on the one hand, and on the other, points in AL, AR, AZ, FL, GA, MS, NM, LA, OK, and TX. (Hearing site: Dallas, TX, or Washington, DC.)

Note.—Dual operations may be involved.

MC 135861 (Sub-62F), filed January 8, 1980. Applicant: LISA MOTOR LINES, INC., P.O. Box 4550, Fort Worth, TX 76106. Representative: Billy R. Reid, 1721 Carl Street, Fort Worth, TX 76103. *Contract carrier* transporting *frozen bakery goods*, from the facilities of S. B. Thomas, Inc., located at Totowa and Secaucus, NJ, to Dallas and Houston, TX, under continuing contract(s) with S. B. Thomas, Inc., of Totowa, NJ. (Hearing site: Fort Worth or Dallas, TX.)

MC 138000 (Sub-64F), filed February 14, 1980. Applicant: ARTHUR H. FULTON, INC., P.O. Box 86, Stephens City, VA 22655. Representative: Dixie C. Newhouse, 1329 Pennsylvania Avenue, P.O. Box 1417, Hagerstown, MD 21740. Transporting *phonograph records and tapes,* between Winchester, VA and Atlanta, GA. (Hearing site: Winchester, VA.)

Note.—Dual operations may be involved.

MC 138741 (Sub-107F), filed February 11, 1980. Applicant: AMERICAN CENTRAL TRANSPORT, INC., 2005 North Broadway, Joliet, IL 60435. Representative: Tom B. Kretsinger, 20 East Franklin, Liberty, MO 64068. Transporting *iron and steel* articles, from St. Louis, MO, to Kansas City, MO. (Hearing site: Kansas City, MO.)

MC 138891 (Sub-7F), filed February 15, 1980. Applicant: FRANK TRANSFER & STORAGE, INC., 324 E. 8th Street, Sioux Falls, SD 57102. Representative: A. J. Swanson, P.O. Box 1103, 226 N. Phillips Avenue, Sioux Falls, SD 57101. Transporting *meats, meat products, dairy products, meat by-products,* and *articles distributed by meat packinghouses* as described in Sections A, B, C of Appendix I to the report in *Descriptions in Motor Carrier Certificates, 61 MCC 209 and 766* (except hides and skins and commodities in bulk), from (1) Huron, SD and (2) the facilities used by John Morrell & Co., at or near Sioux Falls to points in IL, IN, and WI, restricted in (2) above to the transportation of traffic originating at the named origin. (Hearing site: Phoenix, AZ, or Chicago, IL.)

MC 138941 (Sub-40F), filed January 8, 1980. Applicant: COUNTRY WIDE TRUCK SERVICE, INC., 1110 South Reservoir St., Pomona, CA 91766. Representative: K. Edward Wolcott, P.O. Box 56387, Atlanta, GA 30343. *Contract carrier* transporting *unexposed photographic film and chemicals* (except in bulk) in vehicles equipped with mechanical refrigeration from Rochester, NY, to points in CA and TX under a continuing contract or contracts with E. I. DuPont de Nemours & Co., Inc., Wilmington, DE. (Hearing site: Buffalo, NY, or Los Angeles, CA.)

MC 138960 (Sub-10F), filed January 8, 1980. Applicant: ROKO EXPRESS, INC., P.O. Box 169, Columbus, OH 43216. Representative: Elaine M. Conway, 10 S. LaSalle Street, Chicago, IL 60603. Transporting *paper, paper products, and plastic articles,* from the facilities of International Paper Company at (a) Mobile, AL, and (b) Jackson, TN, to points in FL, IL, IN, MI, and OH, restricted to traffic originating at the named origins facilities and destined to the indicated destinations. (Hearing site: Chicago, IL, or New York, NY.)

MC 139460 (Sub-31F), filed January 8, 1980. Applicant: FORT EDWARD EXPRESS CO., INC., Route 9, Saratoga Road, Fort Edwar, NY 12828. Representative: J. Fred Relyes (same address as applicant). Transporting *propane storage tanks,* between points in NY, CT, MA, ME, NH, NJ, OH, PA, RI and VT. (Hearing site: Washington, DC or New York, N.Y.)

MC 142640 (Sub-4F), filed February 14, 1980. Applicant: P.W.K. TERMINALS, INC., 6 Highgate Course, St. Charles, IL 60174. Representative: James R. Madler, 120 W. Madison St., Chicago, IL 60602. *Contract carrier* transporting: (1) *gaskets,* from St. Charles, IL, to points in OH and KY; and (2) *materials, parts, and supplies* used in the manufacture of gaskets and magnetic closures; and plastic granules (except in bulk), from points in OH and KY to St. Charles, IL, under a continuing contract(s) with B. F. Goodrich Company, of Akron, OH. (Hearing site: Chicago, IL.)

MC 143701 (Sub-21F), filed January 8, 1980. Applicant: HODGES FREIGHT LINES, INC., P.O. Box 73–I, Metairie, LA 70033. Representative: Lester C. Arvin, 814 Century Plaza Building, Wichita, KS 67202. Transporting *fiber board* from the facilities of Aurora paper Board at Aurora, IL, to Jefferson City, Kansas City, and Marceline, MO, and Iola, Kansas City, and Topeka, KS. (Hearing site: Chicago, IL, or St. Louis, MO.)

MC 144330 (Sub-88F), filed January 14, 1980. Applicant: UTAH CARRIERS INC., P.O. Box 1218, Freeport Center, Clearfield, UT 84016. Representative: Charles D. Midkiff (same address as applicant). Transporting *lumber, millwork, and wood products,* from points in AZ, to points in LA, restricted to traffic originating at the named origins and destined to the indicated destinations. (Hearing site: Phoenix, AZ.)

MC 144330 (Sub-89F), filed January 14, 1980. Applicant: UTAH CARRIERS INC., P.O. Box 1218, Freeport Center, Clearfield, UT 84016. Representative: Charles D. Midkiff (same address as applicant). Transporting *lumber, millwork, and wood products,* from points in AR, to points in IA, MN, MO, NE, ND, SD, restricted to traffic originating at the named origin and destined to the indicated destinations. (Hearing site: Little Rock, AR.)

MC 144350 (Sub-1F), filed January 4, 1980. Applicant: JOHN B. TESLAA, Box 391, Hull, IA 51239. Representative: Edward A. O'Donnell, 1004 29th Street, Sioux City, IA 51104. Transporting *meats, meat products, meat by-products and articles distributed by meat packinghouses as described* in Section A and C of Appendix I to the Report in *Descriptions in Motor Certificates,* 61 M.C.C. 209 and 766 (except hides and commodities in bulk, in tank vehicles) from the facilities of Dubuque Packing Co., Le Mars, IA to points in CT, DE, DC, FL, GA, IL, IN, KY, ME, MD, MA, MI, MN, MO, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VT, VA, WV, WI, restricted to the transportation of shipments originating at the named facilities and destined to named destinations. (Hearing site: Omaha, NE.)

MC 144621 (Sub-19F), filed January 7, 1980. Applicant: CENTURY MOTOR LINES, INC., P.O. Box 15246, 1720 East Garry Avenue, Santa Ana, CA 92705. Representative: Jack B. Wolfe, 350 Capitol Life Center, 1600 Sherman Street, Denver, CO 80203. Transporting *meats, meat products, meat by-products,* and *articles distributed by meat packinghouses,* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Vehicle Certificates,* 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the facilities of Wilson Foods Corporation, at or near Cherokee, Des Moines, and Cedar Rapids, IA, and Albert Lea, MN to points in CA, restricted to the transportation of traffic originating at the above named origins and destined to the named destinations. (Hearing site: Dallas, TX or Kansas City, MO.)

Note.—Dual operations may be involved.

MC 144621 (Sub-20F), filed January 10, 1980. Applicant: CENTURY MOTOR LINES, INC., P.O. Box 15246, 1720 East Garry Avenue, Santa Ana, CA 92705. Representative: Charles M. Williams, 350 Capitol Life Center, 1600 Sherman Street, Denver, CO 80203. Transporting *meats, meat products, meat by-products,* and articles distributed by meat packinghouses, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the facilities of MBPXL Corporation at or near Plainview, TX, to points in LA, MS, TN, AL, FL, GA, NC, and SC. (Hearing site: Wichita, KS.)

Note.—Dual operations may be involved.

MC 144740 (Sub-23F), filed January 10, 1980. Applicant: L. G. DEWITT, INC., P.O. Box 70, Ellerbe, NC 28338. Representative: Terrence D. Jones, 2033 K Street, Washington, DC 20006. *Contract carrier,* transporting, *candy and confectionary products, chewing gum, beverage preparations,* and *bakery*

products, in vehicles equipped with mechanical refrigeration, from Brooklyn, NY, Linden, North Bergen, Edison, New Brunswick, and Cranford, NJ, and Philadelphia, Reading, and Duryea, PA, to points in CA, OR, WA, NC, SC, GA, FL, TX, LA, UT, AZ, IL, MN, WI, and MO, under continuing contract(s) with Confectionery Consolidators, Inc., of Rahway, NJ. (Hearing site: Washington, DC.)

Note.—Dual operations may be involved.

MC 144891 (Sub-1F), filed February 8, 1980. Applicant: CASSIDY'S TRANSFER & STORAGE LTD., 1001 Mackay Street, P.O. Box 515, Pembroke, ON, Canada K8A 6x7. Representative: Robert D. Gunderman, 710 Statler Building, Buffalo, NY 14202. *Contract carrier* in foreign commerce only, transporting *new office furniture, uncrated* from ports of entry on the international boundary line between the U.S. and Canada at points in NY and MI, to those points in the U.S. in and east of ND, SD, NE, KS, OK and TX under a continuing contract(s) with Storwal International Inc., of Pembroke, Ontario, Canada. (Hearing site: Buffalo, NY.)

MC 145301 (Sub-6F), filed January 8, 1980. Applicant: R. E. M. TRANSPORT CO., INC., Building No. 431, Raritan Center, Edison, NJ 08817. Representative: Brian S. Stern, 2425 Wilson Boulevard, Suite 367, Arlington, VA 22201. Transporting *paint* and *paint products* (except in bulk), from points in Harris County, TX, to points in IL, IN, MA, MI, NH, NJ, NY, OH, PA and RI. (Hearing site: Cleveland, OH.)

MC 145381 (Sub-7F), filed January 3, 1980. Applicant: S & P TRUCKING CO., INC., P.O. Box 1058, Fletcher, NC 28732. Representative: Eric Meierhoefer, Suite 423, 1511 K Street NW., Washington, DC 20005. *Contract carrier* transporting *dialysis supplies and equipment* (except in bulk) between points in the United States (except AK and HI) under a continuing contract(s) with Erika, Inc. of Rockleigh, NJ. (Hearing site: Washington, DC.)

MC 145441 (Sub-90F), filed January 14, 1980. Applicant: A.C.B. TRUCKING, INC., P.O. Box 5130, North Little Rock, AR 72119. Representative: Ralph E. Bradbury (same address as applicant). Transporting *such merchandise* as is dealt in by wholesale and retail variety and food stores from points in the United States (except AK and HI), to Little Rock, AR. (Hearing site: Little Rock, AR, or Memphis, TN.)

Note.—Dual operations may be involved.

MC 145710 (Sub-3F), filed January 7, 1980. Applicant: CHARLES ALBERT MACON, d.b.a., MACON FARMS TRUCK & TRUCK LEASING, 101 Evans Road, Cheraw, SC 29520. Representative: James W. Freeman, 1400 Candler Building, Atlanta, GA 30303. *Contract carrier,* transporting *rolls of pulpboard and fibreboard* (not corrugated), between Florence, SC and points in CT, FL, GA, IL, IN, KY, ME, MD, MI, MN, MO, NJ, NC, OH, PA, TN, VA, WV, and WI, under continuing contract(s) with South Carolina Industries, of Florence, SC. (Hearing site: Florence, SC.)

MC 145950 (Sub-73F), filed January 4, 1980. Applicant: BAYWOOD TRANSPORT, INC., Route 6, P.O. Box 2611, Waco, TX 76706. Representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 11th Street NW., Washington, DC 20001. Transporting *glassware, earthenware, and glassware and earthenware products,* from Dunkirk, IN, Scio, Lancaster and Toledo, OH, Sapulpa, OK, and Jeanette, PA, to the facilities of Trendco, Inc., at or near Austin, TX. (Hearing site: Austin, TX.)

MC 145981 (Sub-23F), filed January 7, 1980. Applicant: ACE TRUCKING CO., INC., 1 Hackensack Avenue, South Kearney, NJ 07032. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. Transporting (1) *non-edible oils,* and (2) *materials, equipment,* and *supplies* used in their manufacture and sale, (except commodities in bulk), between New York, NY, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: New York, NY, or Washington, DC.)

MC 145981 (Sub-24F), filed January 17, 1980. Applicant: ACE TRUCKING CO., INC., 1 Hackensack Avenue, South Kearney, NJ 07032. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. Transporting (1) *groceries, and grocery store supplies,* and (2) *materials, and equipment,* used in their manufacture and sale, (except commodities in bulk), between points in MA, on the one hand, and, on the other, points in the United States (except AK and HI) (Hearing site: Boston, MA, or Washington, DC.)

MC 146111 (Sub-3F), filed January 8, 1980. Applicant: INDUSTRIAL TRANSPORT, INC., 11910 Harvard Avenue, Cleveland, OH 44105. Representative: Brian S. Stern, 2425 Wilson Boulevard, suite 367, Arlington, VA 22201. Transporting *paint* and *paint products* (except in bulk), (1) from Delaware, OH, to Atlanta, GA, New Orleans, LA, Detroit, MI, St. Louis and Kansas City, MO, Philadelphia, PA, Memphis, TN, and Dallas, TX, and (2) from East Point, GA to Dover, DE. (Hearing site: Pittsburgh, PA or Washington, DC.)

Note.—Dual operations are involved.

MC 146281 (Sub-1F), filed July 23, 1979. Applicant: SILVER FLEET EXPRESS, INC., P.O. Box 6089, 4521 Rutledge Pike, Knoxville, TN 37914. Representative: Blaine Buchanan, 1024 James Building, Chattanooga, TN 37402. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities which because of size or weight require the use of special equipment), serving Etowah, TN, as an off-route point in connection with applicant's otherwise authorized regular-route operations between Knoxville, TN, and New Orleans, LA. (Hearing site: Knoxville or Nashville, TN.)

MC 146281 (Sub-4F), filed January 2, 1980. Applicant: SILVER FLEET EXPRESS, INC., 4521 Rutledge Pike, P.O. Box 6089, Knoxville, TN 37914. Representative: Henry E. Seaton, 929 Pennsylvania Building, 425 13th Street NW., Washington, DC 20004. Over *regular routes,* transporting *general commodities* (except classes A and B explosives, commodities in bulk, and those requiring special equipment), between New Orleans, LA, and Cincinnati, OH, from New Orleans over U.S. Hwy 11 to Knoxville, TN, then over TN Hwy 33 to junction U.S. Hwy 25E, then over U.S. Hwy 25E to junction U.S. Hwy 25, then over U.S. Hwy 25 to Cincinnati, and return over the same route, serving all intermediate points. (Hearing site: Cincinnati, OH or Knoxville, TN.)

MC 146360 (Sub-20F), filed January 7, 1980. Applicant: FLOYD SMITH, JR. TRUCKING, INC., P.O. Box 816, Meridian, ID 83642. Representative: Timothy R. Stivers, P.O. Box 162, Boise, ID 83701. Transporting (1) *building materials,* and (2) *equipment, materials,* and *supplies* used in their manufacture, (1) from the facilities of Metalbestos Systems, Inc., (a) in OH to points in the United States (except AK, CA, CO, HI, ID, IA, IL, KS, MN, NC, ND, SD, TX, and WI, (b) in NC to points in the United States (except AK and HI) and (2) from points in the United States (except AK and HI) to the facilities of Metalbestos Systems, Inc., in ID, NC, and OH. (Hearing site: Boise, ID.)

MC 146420 (Sub-3F), filed January 23, 1980. Applicant: FRATE SERVICE, INC., Rural Route One, East Peoria, IL 61530. Representative: Samuel G. Harrod, Eureka Professional Building, Eureka, IL 61530. Transporting *iron and steel articles* from the facilities of Jones &

Laughlin Steel Corporation at or near Chicago, IL to St. Louis, MO and Davenport, IA, and points in IL. (Hearing site: Chicago, IL.)

MC 146440 (Sub-4F), filed January 7, 1980. Applicant: BOSTON CONTRACT CARRIER, INC., P.O. Box 68, Brookline, MA 02167. Representative: Alan Bernson, suite 32, 34 Market Street, Everett, MA 02149. Transporting *mineral water,* (except in bulk), from the facilities of the Poland Spring Corp., at Poland Springs, ME to points in the United States (except AK and HI). (Hearing site: Boston, MA or Washington, DC.)

MC 146440 (Sub-5F), filed January 3, 1980. Applicant: BOSTON CONTRACT CARRIER, INC., P.O. Box 68, Brookline, MA 02167. Representative: Alan Bernson, Suite 32, 34 Market Street, Everett, MA 02149. Transporting (1) *paper products,* and (2) *equipment, materials,* and *supplies* used in the manufacture and distribution of paper products, between Franklin and Windsor Counties, VT, on the one hand, and, on the other, points in the U.S. (except AK and HI) restricted in (1) and (2) above against the transportation of commodities in bulk. (Hearing site: Boston, MA or Washington, DC.)

MC 146451 (Sub-18F), filed January 7, 1980. Applicant: WHATLEY-WHITE INC., 230 Ross Clark Circle, NE., Dothan, AL 36302. Representative: R. S. Richard, P.O. Box 2069, Montgomery, AL 36103. Transporting (1) *synthetic resins, navel stores, tall oil products* from the facilities of Arizona Chemical Co. located at or near Panama City, FL, to points in the United States (except AK and HI); and (2) *materials, equipment and supplies* used in the production, or distribution of the commodities named above in the reverse direction. (Hearing site: Dothan, AL or Panama City, FL.)

MC 146580 (Sub-4F), filed January 11, 1980. Applicant: FREIGHT SYSTEMS, INC., 4191 Meridian Street, Bellingham, WA 98225. Representative: Stephen B. Johnson, 30th floor, Bank of California Center, Seattle, WA 98164. *Contract carrier,* transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment) (1) between points in Hood River, Wasco, Sherman, Jefferson, Deschutes, Crook, Lane, Lincoln, Benton, Linn, Marion, Polk, Tillamook, Clatsop, Columbia, Washington, Yamhill, Clackamas, Multnomah, Coos, and Curry Counties, OR, (2) between applicant's facilities in Portland, OR, and Woodland, WA; and (3) between applicant's facilities in Portland, OR, and points in Clark County, WA; under continuing contract(s) with Amway Corporation, of Kent, WA. (Hearing site, Seattle, WA.)

MC 146651 (Sub-2F), filed January 8, 1980. Applicant: ARTHUR W. COULTER, d.b.a. A. W. COULTER TRUCKING, 24280 Avenue 95, Terra Bella, CA 93270. Representative: Earl N. Miles, 3704 Candlewood Drive, Bakersfield, CA 93306. Transporting *lumber* from the facilities of Sierra Forest Products at Terra Bella, CA to points in AZ. (Hearing site: Bakersfield, CA.)

MC 146821 (Sub-3F), filed February 8, 1980. Applicant: RON BESTEMAN PRODUCE, INC., 2240 Bryon Center Road SW., Wyoming, MI 49509. Representative: Edward Malinzak, 900 Old Kent Building, Grand Rapids, MI 49509. Transporting *apple products* (except in bulk) and *glass and paper* containers, in vehicles equipped with mechanical refrigeration, between Belding, MI and points in IL, WI, and IA. (Hearing site: Lansing, MI or Chicago, IL.)

MC 146890 (Sub-20F), filed February 5, 1980. Applicant: C & E TRANSPORT, INC., d.b.a. C. E. ZUMSTEIN CO., P.O. Box 27, Lewisburg, OH 45338. Representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 11th Street, NW., Washington, DC 20001. Transporting (1) *such commodities as are dealt in by grocery and food business and agricultural feed business houses, soya products, dry flour paste, pet food, and* (2) *materials, equipment,* and *supplies* used in the develpment, manufacture, and distribution and of the commodities listed in (1) above (except commodities in bulk), between those points in the U.S. in and east of MN, IA, MO, OK, and TX, restricted to the transportation of traffic originating at or destined to the facilities of Ralston Purina Company. (Hearing site: St. Louis, MO.)

Note.—Dual operations may be involved.

MC 147130 (Sub-1F), filed January 24, 1980. Applicant: AYOTTE TRANSPORT, INC., P.O. Box 705, Goshen, NH 03752 Representative: R. Peter Decto, 23 Bank Street, Lebanon, NH 03766. *Contract carrier,* transporting *lumber and wood products,* from the facilities of Marlow Lumber Company at Marlow, NH to points in CT, ME, MA, RI, and VT and to ports of entry on international boundary line between U.S. and Canada in NH, and NY, under a continuing contract(s) with Henry T. Ayotte d.b.a. Marlow Lumber Company of Marlow, NH. (Hearing site: Concord, NH or Boston, MA.)

MC 147280 (Sub-3F), filed January 9, 1980. Applicant: WARREN GRADWELL, d.b.a. W. L. GRADWELL TRANSPORT, Route 1, Box 52, Mingo, IA 50168. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. *Contract carrier,* transporting *pork products* (except in bulk), from points in IL, MN, and NE to (1) San Leandro, CA, under continuing contract(s) with Joe Larwill Fresh Pork, of San Leandro, CA, (2) Reno, NV, and Sacramento, CA, under continuing contract(s) with Calvada Sales Co., of Reno, NV and (3) San Francisco, CA, under continuing contract(s) with C. J. Figone & Son, of San Francisco, CA. (Hearing site: San Francisco, CA.)

MC 147410 (Sub-2F), filed February 15, 1980. Applicant: SALVADOR AND ARNULFO, a partnership, 6714 South 6th Avenue, Tucson, AZ 85706. Representative: A. Michael Bernstein, 1441 East Thomas Road, Phoenix, AZ 85014. Transporting in foreign commerce only *general commodities,* (except) *commodities in bulk,* between points in AZ on the one hand, and, on the other, ports of entry on the international boundary line between U.S. and Mexico in AZ. (Hearing site: Phoenix, AZ.)

Note.—Certificate authorized to be issued in this proceeding shall be limited in point of time to a period expiring 5 years from date of issuance.

MC 147831 (Sub-18F), filed January 14, 1980. Applicant: CENTRAL STATES EXPRESS, INC., P.O. Box 2464, Jackson, TN 38301. Representative: Abraham A. Diamond, 29 South LaSalle Street, Chicago, IL 60603. Transporting (1) *such commodities* as are dealt in by food, grocery, and drug industries (except in bulk), and (2) *materials, equipment and supplies* used in their manufacture, sale and distribution, from the facilities of Proctor & Gamble Distributing Company at Jackson, TN, to points in AR, IL, IN, LA, MI, MO, OH, OK, and TX. (Hearing site: Jackson, TN.)

MC 148530 (Sub-3F), filed January 23, 1980. Applicant: MID MONTANA, INC., 1010 North House, P.O. Box 1131, Bozeman, MT 59715. Representative: Gary Everson, 320 Hart-Albin Building, Billings, MT 59101. Transporting *agricultural implements, farm machinery, tools, parts, and accessories,* from points in AL, CA, CO, GA, IL, IN, IA, KS, KY, ME, MI, MN, MO, MT, NE, NJ, NY, NC, ND, OH, OR, PA, RI, SD, TN, TX, WA, WV, and WI, to points in ND, SD, WY, ID, and MT. (Hearing site: Billings or Bozeman, MT.)

MC 148570F, filed July 26, 1979, and previously noticed in **Federal Register** issue of February 14, 1980. Applicant: N.A.T. TRANSPORTATION, INC., 229

North Main Street, Bradner, OH 43406. Representative: Abraham A. Diamond, 29 South LaSalle Street, Chicago, IL 60603. Transporting (1) *radiators, radiator cores, and heat exchangers,* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk), between the facilities of Modine Manufacturing Company, at (a) Whittier, CA, (b) Bloomington and McHenry, IL, (c) La Porte and Logansport, IN, (d) Paducah, KY, (e) Germantown, MN, (f) Joplin and Trenton, MO, (g) Pemberville, OH, (h) Clinton, Knoxville, and Lawrenceburg, TN, (i) Buena Vista, VA, and (j) Racine, WI, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Chicago, IL, or Washington, DC.)

Note.—This republication includes Pemberville, OH, as an origin or destination point.

MC 148690 (Sub-2F), filed January 4, 1980. Applicant: GARY G. BUNDAY d.b.a. GARY BUNDAY TRUCKING, 1710 Terrace Avenue, Bozeman, MT 59715. Representative: Steven K. Kuhlmann, 2600 Energy Center One, 717 17th Street, Denver, CO 80202. Contract carrier transporting *beer* and *wine* (except in bulk), from points in CA, Chicago, IL, Louisville, KY, Hammondsport, NY, and Seattle, WA, to Bozeman, MT under contract(s) with Bronkin's and Bronkin's Good Time Company, both of Bozeman, MT. (Hearing site: Bozeman, MT.)

MC 148751 (Sub-5F), filed February 8, 1980. Applicant: LINCOLN FREIGHT LINES, INC., P.O. Box 427, Lapel, IN 46051. Representative: Norman R. Garvin, 1301 Merchants Plaza, Indianapolis, IN 46204. Transporting (1) *pulpboard and fibreboard rolls,* and (2) *materials, equipment, and supplies* (except commodities in bulk), between Conalco, TN, on the one hand, and on the other, points in IL, IN, KY, MO, OH, and WI. (Hearing site: Indianapolis, IN or Chicago, IL.)

Note.—Dual operations may be involved.

MC 149150 (Sub-1F), filed February 6, 1980. Applicant: 166 AUTO AUCTION, INC., 2944 West Sunshine, Springfield, MO 65807. Representative: Bruce McCurry, 910 Plaza Towers, Springfield, MO 65804. Transporting *used passenger automobiles and cars, used pickup trucks* in secondary movements, (1) from Springfield, MO to points in AR, CO, IL, IN, IA, KS, MI, NE, OK, TN, and TX and (2) between points in AR, CO, IL, IN, IA, KS, MO, MI, NE, OK, TN, and TX. (Hearing site: Kansas City, or St. Louis, MO.)

MC 149170 (Sub-2F), filed February 19, 1980. Applicant: ACTION CARRIER, INC., 1000 East 41st Street, Sioux Falls, SD 57105. Representative: Carl L. Steiner, 39 South LaSalle Street, Chicago, IL 60603. Transporting *foodstuffs* (except in bulk), from the facilities used by Thomas J. Lipton, Inc., at or near Kansas City, MO, to Denver, CO, Chicago, IL, Minneapolis, MN and Milwaukee, WI (Hearing site: Chicago, IL.)

MC 149270F, filed January 3, 1980. Applicant: PROCESSED CEMENT, INC., 355 Lakeview Road, Wayzata, MN 55391. Representative: James F. Finley, 1401 Silver Lake Road, New Brighton, NW 55112. Transporting *flyash* and *liquid concrete admixtures* between points in WI, ND, SD, IA, NE, MN and IL. (Hearing site: Minneapolis, MN.)

Passengers

MC 13300 (Sub-94F), filed February 1, 1980. Applicant: CAROLINA COACH CO., d.b.a. CAROLINA TRAILWAYS, 1201 South Blount Street, Raleigh, NC 27611. Representative: Lawrence E. Lindeman, 425 13th Street, NW., Suite 1032, Washington, DC 20004. Over regular routes, transporting *passengers and their baggage,* and *express* and *newspapers* in the same vehicle with passengers, between Annapolis, MD, and Washington, DC, over U.S. Hwy 50, serving no intermediate points, restricted against the transportation of passengers whose entire ride is between Annapolis and Washington.

MC 27530 (Sub-17F), filed January 7, 1980. Applicant: KERRVILLE BUS CO., INC., P.O. Box 712, Kerrville, TX 78028. Representative: Jerry Prestridge, P.O. Box 1148, Austin, TX 78767. Transporting over regular routes, (1) *passengers and their baggage,* and *express* and *newspapers* in the same vehicle with passengers, between La Grange, TX, and Sealy, TX, from La Grange over Texas Hwy 71 to Columbus, TX, then over Interstate Hwy 10 to Sealy, and return over the same route serving Columbus, TX, as an intermediate point; and over irregular route transporting (2) *passengers* and *their baggage* in one-way and round-trip charter operations, over irregular routes: (a) from Columbus, TX, to all points in the United States (including AK, but excluding HI); (b) beginning and ending at Columbus, TX, and extending to points in the United States (including AK but excluding HI). (Hearing site: Austin, TX or Houston, TX.)

MC 145961 (Sub-1F), filed January 17, 1980. Applicant: BAYARD LIMOUSINE SERVICE, INC., 49 Ewell Street, Babylon, NY 11702. Representative: Sidney J. Leshin, 575 Madison Avenue, New York, NY 10022. Transporting *passengers,* in special operations, in vehicles having a seating capacity of no more than 16, beginning and ending at points in the Borough of Manhattan south of Houston Street, New York, NY, and extending to the Meadowlands Sporting Complex at East Rutherford, NJ. (Hearing site: New York, NY.)

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Decided: February 29, 1980.

By the Commission, Review Board No. 2, Members Eaton, Liberman, and Jensen.

MC 76 (Sub-25F), filed October 4, 1979. Applicant: MAWSON & MAWSON, INC., P.O. Box 248, Langhorne, PA 19047. Representative: Paul F. Sullivan, 711 Washington Building, Washington, DC 20005. Transporting (a) *iron and steel articles,* from the facilities of Cyclops Corp., Sawhill Tubular Division, at or near Sharon, PA, to points in CT, MA, RI, OH, NY, NJ, MD, DE, VA, and those points in MI in and south of Oceana, Newaygo, Mecosta, Isabelle, Midland and Bay Counties, and (b) *materials, equipment, and supplies* used in the manufacture of the commodities in (1) above (except commodities in bulk), in the reverse direction. (Hearing site: Philadelphia, PA, or Washington, DC.)

MC 1117 (Sub-22F), filed October 11, 1979. Applicant: M.G.M. TRANSPORT CORP., 70 Maltese Drive, Totowa, NJ 07512. Representative: Morton E. Kiel, Suite 1832, 2 World Trade Center, New York, NY 10048. Transporting *paper and paper products,* from Exton and Modena, PA, to Granite Falls and High Point, NC. (Hearing site: New York, NY.)

MC 11207 (Sub-509F), filed November 9, 1979. Applicant: DEATON, INC., 317 Avenue W, P.O. Box 938, Birmingham, AL 35201. Representative: Kim D. Mann, Suite 1010, 7101 Wisconsin Avenue, Washington, DC 20014. Transporting *pipe, and iron and steel articles,* between Bessemer, AL, on the one hand, and, on the other, points in IL, IN, MI, OH, PA, VA, WV, and WI. (Hearing site: Birmingham, AL, or Washington, DC.)

MC 11207 (Sub-510F), filed November 13, 1979. Applicant: DEATON, INC., 317 Avenue W, P.O. Box 938, Birmingham, AL 35201. Representative: Kim D. Mann, Suite 1010, 7101 Wisconsin Avenue, Washington, DC 20014. Transporting *iron and steel articles,* from Baytown, TX, to points in AL, AR, FL, GA, LA, MS, and TN. (Hearing site: Houston, TX, or Washington, DC.)

MC 26396 (Sub-297F), filed October 4, 1979. Applicant: THE WAGGONERS TRUCKING, a corporation, P.O. Box 31357, Billings, MT 59107.

Representative: Barbara S. George (same address as applicant). Transporting (1) *grain and feed storage and handling systems*, and (2) *parts and accessories* for the commodities named in (1) above, from points in IN and IL, to points in IA, IL, IN, KS, KY, MI, MN, MO, MT, NE, ND, NY, OH, OK, PA, SD, TX, UT, VA, VT, WA, WI, and WY. (Hearing site: Billings, MT.)

MC 35396 (Sub-42F), filed October 5, 1979. Applicant: UNITED TRUCKING OF KENTUCKY, INC., 8505 West Warren Avenue, Dearborn, MI 48126. Representative: LaVergne L. Adsit (same address as applicant). Over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between junction U.S. Hwys 41 and 62 at or near Nortonville, KY, and junction U.S. Hwys 95 and 62 at or near Calvert City, KY, over U.S. Hwy 62, serving the intermediate points of Dawson Springs, Princeton, Eddyville, and Kuttawa, KY, and the off-route points of Morganfield, Providence, Marion, Hopkinsville, Cadiz, Benton, and Murray, KY, and the facilities of General Tire Company near Mayfield, KY. (Hearing site: Louisville, KY, or Washington, DC.)

Note.—Applicant states it presently has authority to service Nortonville, Calvert City, Murray, and Benton, KY, and that it will tackle the authority herein with its existing authority.

MC 41406 (Sub-158F), filed November 9, 1979. Applicant: ARTIM TRANSPORTATION SYSTEM, INC., 8400 Westlake Drive, Merrillville, IN 46410. Representative: Wade H. Bourdon, 8400 Westlake Drive, Merrillville, IN 46410. Transporting (1) *iron and steel articles*, from Clinton, IA, Chicago Heights, IL, and Clinton, TN, to those points in the United States in and east of MN, IA, KS, MO, AR, and LA. (2) *materials, equipment and supplies*, used in the manufacture of iron and steel articles in the reverse direction of (1) above. (Hearing site: Chicago, IL.)

MC 59457 (Sub-49F), filed October 1, 1979. Applicant: SORENSEN TRANSPORTATION CO., INC., Old Amity Road, Bethany, CT 06525. Representative: Thomas W. Murrett, 342 North Main Street, West Hartford, CT 06117. Transporting *concentrated frozen citrus juices*, in containers, from Lake Wales, FL, to the facilities of the Borden Corporation, at Stratford, CT, restricted to the traffic destined to the named facilities. (Hearing site: Hartford, CT, or New York, NY.)

MC 61016 (Sub-54F), filed November 6, 1979. Applicant: PETER PAN BUS LINES, INC., 1776 Main Street, Springfield, MA 01103. Representative: Philip J. Shine, 95 State Street, Springfield, MA 01103. Over regular routes, transporting *passengers and their baggage, and express and newspapers in the same vehicle with passengers*, between West Hartford, CT, and Springfield, MA: from West Hartford over U.S. Hwy 84 to junction U.S. Hwy 91 at Hartford, CT, then over U.S. Hwy 91 to Springfield, and return over the same route, serving all intermediate points. (Hearing site: Springfield, MA, or Hartford, CT.)

Note.—Applicant will tack with other regular-route authority.

MC 63417 (Sub-248F), filed October 1, 1979. Applicant: BLUE RIDGE TRANSFER CO., INC., P.O. Box 13447, Roanoke, VA 24034. Representative: William E. Bain (same address as applicant). Transporting *glass*, from Nashville, TN, and Tulsa, OK, to Rocky Mount, VA. (Hearing site: Roanoke, VA.)

MC 63417 (Sub-253F), filed October 5, 1979. Applicant: BLUE RIDGE TRANSFER CO. INC., P.O. Box 13447, Roanoke, VA 24034. Representative: William E. Bain (same address as applicant). Transporting *molded pulp products, molded peat products, paper products*, and *expanded foam plastic products*, from Albertville, AL, New Iberia, LA, and Memphis, TN, to those points in the United States in and east of ND, SD, NE, KS, OK, and TX. (Hearing site: Washington, DC.)

MC 72997 (Sub-27F), filed November 2, 1979. Applicant: LIBERTY TRUCKING CO., a corporation, 5000 West Pershing, Chicago, IL 60650. Representative: Carl L. Steiner, 39 South LaSalle, Street, Chicago, IL 60603. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, (1) between those points in WI in and south of Vernon, Richland, Sauk, Columbia, Dodge, Washington, and Ozaukee counties, and those in IL on, east, and north of a line beginning at the IN–IL State line and extending along U.S. Hwy 36 to junction U.S. Hwy 67, and then along U.S. Hwy 67 to the Mississippi River, and (2) between Wonewoc, WI, on the one hand, and, on the one hand, and, on the other, those points in IL described in (1) above. (Hearing site: Chicago, IL.)

Note.—Applicant states it intends to tack the authority herein with its existing regular-route authority authorizing service between Chicago, IL, and points in IL and WI.

MC 93147 (Sub-11F), filed November 14, 1979. Applicant: DELTA TRANSPORT CORP., 844 Union Street., P.O. Box 546, West Springfield, MA 01089. Representative: James M. Burns, 1383 Main Street, suite 413, Springfield, MA 01103. Transporting *foodstuffs*, from the facilities of Ragu' Foods, Inc., at Rochester, NY, to points in CT, ME, MA, NJ, NH, RI and VT. (Hearing site: Boston, MA, or New York, NY.)

MC 95876 (Sub-313F), filed October 1, 1979. Applicant: ANDERSON TRUCKING SERVICE INC., 203 Cooper Avenue, North, St. Cloud, MN 56301. Representative: William L. Libby (same address as applicant). Transporting *plastic pipe and plastic fittings*, from points in Travis County, TX, to points in the United States (except AK and HI). (Hearing site: Houston or Dallas, TX.)

MC 100666 (Sub-500F), filed November 9, 1979. Applicant: MELTON TRUCK LINES, INC., P.O. Box 7666, Shreveport, LA 71107. Representative: Wilburn L. Williamson, suite 615, East, The Oil Center, 2601 Northwest Expressway, Oklahoma City, OK 73112. Transporting (1) *iron and steel articles*, from the facilities of Chaparral Steel Company, at or near Midlothian, TX, to points in the United States (except AK and HI), and (2) *materials, equipment, and supplies* used in the manufacture of iron and steel articles (except commodities in bulk), in the reverse direction. (Hearing site: Dallas, TX, or New Orleans, LA.)

MC 100666 (Sub-514F), filed July 13, 1979. Applicant: MELTON TRUCK LINES, INC., P.O. Box 7666, Shreveport, LA 71107. Representative: Wilbur L. Williamson, Suite 615, East, The Oil Center, 2601 Northwest Expressway, Oklahoma City, OK 73112. Transporting *such commodities* as are dealt in or used by agricultural equipment, industrial equipment, and lawn and leisure product dealers, (except commodities in bulk), between the facilities used by John Deere Company, in Jackson County, MO, on the one hand, and, on the other, points in KS and OK. (Hearing site: Kansas City, MO.)

MC 105566 (Sub-212F), filed November 7, 1979. Applicant: SAM TANKSLEY TRUCKING, INC., P.O. Box 1120, Cape Girardeau, MO 63701. Representative: Thomas F. Kilroy, Suite 406, Executive Building, 6901 Old Keene Mill Road, Springfield, VA 22150. Transporting *clothing*, from Henderson, NV, to Newnan, GA, Erlanger and Florence, KY, Cincinnati, OH, and Fort Worth, TX. (Hearing site: Cincinnati, OH.)

MC 107527 (Sub-62F), filed November 14, 1979. Applicant: POST

TRANSPORTATION CO., a corporation, 1970 East 213th Street, Long Beach, CA 90801. Representative: R. Sherman Kirksey (same address as applicant). *Contract carrier,* transporting *liquid aluminum sulphate,* in bulk, in tank vehicles, from points in Los Angeles County, CA, to points in Clark County, NV, under continuing contract(s) with Allied Chemical Corporation, of San Francisco, CA. (Hearing site: Los Angeles, CA, or Las Vegas, NV.)

MC 108937 (Sub-58F), filed October 3, 1979. Applicant: MURPHY MOTOR FREIGHT LINES, INC., 2323 Terminal Road, St. Paul, MN 55113. Representative: Jerry E. Hess, P.O. Box 43640, St. Paul, MN 55164. Over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between Kansas City, MO, and South Bend, IN: from Kansas City over Interstate Hwy 35 to junction Interstate Hwy 80, then over Interstate Hwy 80 to South Bend, and return over the same route, serving no intermediate points, and (2) between Kansas City, MO, and Indianapolis, IN, over Interstate Hwy 70, serving no intermediate points. (Hearing site: Kansas City, MO, or Indianapolis, IN.)

Note.—Applicant will tack with other regular-route authority.

MC 112617, (Sub-455F), filed November 5, 1979. Applicant: LIQUID TRANSPORTERS, INC., 1292 Fern Valley Road, P.O. Box 21395, Louisville, KY 40221. Representative: Charles R. Dunford (same address as applicant). Transporting *dry milled corn products,* in bulk, in hopper-type vehicles, from Mt. Vernon, IN, to points in IL, KY, MO, and TN. (Hearing site: Louisville, KY, or Washington, DC.)

MC 113666 (Sub-190F), filed October 9, 1979. Applicant: FREEPORT TRANSPORT, INC., 1200 Butler Road, Freeport, PA 16229. Representative: D. R. Smetanick (same address as applicant). Transporting (1) *grouting compounds,* and (2) *materials and supplies* used in the manufacture and installation of grouting compounds, between Cincinnati, OH, and Pekin, IL, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Pittsburgh, PA, or Washington, D.C.)

MC 115557 (Sub-24F), filed October 4, 1979. Applicant: CHARLES A. McCALLEY, 308 Leasure Way, New Bethlehem, PA 16242. Representative: Henry M. Wick, Jr., 2310 Grant Building, Pittsburgh, PA 15219. Transporting *molds, and materials, equipment and supplies* used in the manufacture of molds and glass containers (except commodities in bulk), between the facilities of Glass Containers Corporation, at (a) Antioch, Hayward, and Vernon, CA, (b) Dayville, CT, (c) Forest Park, GA, (d) Gas City and Indianapolis, IN, (e) Jackson, MS, (f) Knox, Marienville, Parker and Reno, PA, and (g) Palestine, TX. (Hearing site: Pittsburgh, PA, or Washington, D.C.)

MC 115826 (Sub-551F), filed October 5, 1979. Applicant: W. J. DIGBY, INC., 6015 East 58th Avenue, Commerce City, CO 80022. Representative: Howard Gore (same address as applicant). Transporting *such commodities* as are dealt in or used by drug, grocery and food businesshouses (except frozen commodities and commodities in bulk), from the facilities of Colgate-Palmolive Co., at or near Kansas City, KS, to points in CO, MN, IL, NM, NE, IA, TX, and OK, restricted to traffic originating at the named origin and destined to the indicated destinations. (Hearing site: Denver, CO.)

MC 116077 (Sub-428F), filed November 6, 1979. Applicant: DSI TRANSPORTS, INC., 4550 Post Oak Place Drive, P.O. Box 1505, Houston, TX 77001. Representative: James M. Doherty, 500 West 16th Street, P.O. Box 1945, Austin, TX 78767. Transporting *chemicals,* in bulk, in tank vehicles, from the facilities of E. I. du Pont de Nemours & Co., Inc., at or near Gregory, TX, to points in AL, AR, CO, FL, GA, IL, KS, KY, LA, MS, MO, NE, NM, OK, and TN. (Hearing site: Houston or Dallas, TX.)

MC 116947 (Sub-78F), filed November 4, 1979. Applicant: SCOTT TRANSFER CO., INC., 920 Ashby Street S.W., Atlanta, GA 30310. Representative: William Addams, P.O. Box 720434, Atlanta, GA 30328. *Contract carrier,* transporting (1) *paints, caulking compounds,* and (2) *materials, equipment, and supplies* used in the manufacture of the commodities in (1) above, (except commodities in bulk), between the facilities of United Coating, Inc., at (a) Charlotte, NC, (b) Chicago, IL, (C) Indianapolis, IN, and (d) Memphis, TN, on the one hand, and, on the other, those points in the United States in and east of MN, IA, MO, AR, and LA, under continuing contract(s) with United Coating, Inc., of Chicago, IL. (Hearing site: Atlanta, GA.)

Note.—Dual operations may be involved.

MC 117786 (Sub-73F), filed November 6, 1979. Applicant: RILEY WHITTLE, INC., P.O. Box 19038, Phoenix, AZ 85005. Representative: A. Michael Bernstein, 1441 E. Thomas Road, Phoenix AZ 85014. Transporting *meats, and meat products, and meat byproducts,* from the facilities of Kahn's and Company, at Cincinnati, OH, to points in NM and FL. (Hearing site: Phoenix, AZ.)

MC 118516 (Sub-5F), filed November 6, 1979. Applicant: MAMMOTH OF ALASKA, INC., 1048 Whitney Road, Anchorage, AK 99501. Representative: Arthur R. Hauver, 810 West Second Avenue, Anchorage, AK 99501. Transporting *general commodities* (except classes A and B explosives), between points in the commercial zone of Valdez, AK, restricted to the transportation of traffic having a prior or subsequent movement by water. (Hearing site: None.)

MC 119176 (Sub-28F), filed October 4, 1979. Applicant: THE SQUAW TRANSIT CO., a corporation, 6211 South 49th West Avenue, P.O. Box 9368, Tulsa, OK 74107. Representative: Clint Oldham, 1108 Continental Life Building, Fort Worth, TX 6102. Transporting *synthetic roofing* (except in bulk), and *accessories, materials, and supplies* used in the manufacture, distribution or installation of synthetic roofing, between the facilities of Trim Products Manfacturing, Inc., at or near Torrance, CA, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Los Angeles, CA, or Tulsa, OK.)

MC 119777 (Sub-417F), filed October 1, 1979. Applicant: LIGON SPECIALIZED HAULER, INC., Highway 85, East, Madisonville, KY 42431. Representative: Carl U. Hurst, P.O. Drawer "L", Madisonville, KY 42431. Transporting *dry phosphatic feed supplements,* (except in bulk, in tank vehicles), from New Wales, FL, to points in AL, AR, AZ, CA, IL, IN, IA, KS, KY, MI, MN, MS, MO, NE, OH, OK, SD, TN, TX, UT, and WI. (Hearing site: Chicago, IL.)

MC 119777 (Sub-419F), filed October 4, 1979. Applicant: LIGON SPECIALIZED HAULER, INC., Highway 85, East, Madisonville, KY 42431. Representative: Carl U. Hurst, P.O. Drawer "L" Madisonville, KY 42431. Transporting *roofing materials and supplies* (except commodities in bulk), between the facilities of Koppers Company, Inc., at or near (a) Stickney, IL, and (b) Woodward, AL, on the one hand, and, on the other, those points in the United States in and east of ND, SD, NE, KS, OK and NM. (Hearing site: Pittsburgh, PA, or Cleveland, OH.)

MC 123407 (Sub-615F), filed October 3, 1979. Applicant: SAWYER TRANSPORT, INC., Sawyer Center, Route 1, Chesterton, IN 46304. Representative: H. E. Miller, Jr. (same address as applicant). Transporting, *flat*

glass and glass glazing units, from the facilities of PPG Industries, Inc., at Mt. Zion, IL, to St. Louis, Springfield, and Joplin, MO, and points in MI, IN, OH, FL, AZ, UT, NV, ID, CA, OR, and WA. (Hearing site: Washington, DC.)

MC 123987 (Sub-33F), filed November 2, 1979. Applicant: JEWETT SCOTT TRUCK LINE, INC., P.O. Box 267, Mangum, OK 73554. Representative: Richard Hubbert, P.O. Box 10236, Lubbock, TX 79408. Transporting (1)(a) *irrigation systems,* and (b) *plastic and aluminum pipe and fittings,* from the facilities of Peerless Plastics, Inc., at Garden City, KS, and the facilities of Kroy Metal Products Company, at York, NE, to points in AR, AZ, AL, CA, CO, GA, KS, LA, MO, MS, MT, ND, NE, MN, NV, OK, SD, TX, UT, and WY; and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) and (2) above, in the reverse direction. (Hearing site: Oklahoma City, OK, or Kansas City, MO.)

MC 124887 (Sub-100F), filed November 8, 1979. Applicant: SHELTON TRUCKING SERVICE, INC., Route 1, Box 230, Altha, FL 32421. Representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202. Transporting (1) *construction materials,* and (2) *materials, equipment and supplies* used in the manufacture of the commodities named in (1) above, between those points in the US in and east of ND, SD, NE, KS, OK, and TX, restricted to the transportation of traffic originating at or destined to the facilities of Louisiana-Pacific Corporation. (Hearing site: Jacksonville, or Tallahassee, FL.)

MC 125297 (Sub-6F), filed November 8, 1979. Applicant: FRANK'S TRANSPORT, INC., 5321 West River Road North, Lorain, OH 44055. Representative: Earl N. Merwin, 85 East Gay St., Columbus, OH 43215. Transporting *cement,* in bulk, in tank vehicles, between the facilities of Dundee Cement Company, at Ashtabula, OH, on the one hand, and, on the other, points in NY, OH, PA, and WV. (Hearing site: Cleveland or Columbus, OH.)

MC 133176 (Sub-2F), filed October 3, 1979. Applicant: E.P.I. TRANSPORT CO., a corporation, 11 Tolbot Avenue, P.O. Box 190, Braddock, PA 15014. Representative: Arthur J. Diskin, 806 Frick Building, Pittsburgh, PA 15219. Contract carrier, transporting (1) *metals and metal building products,* and (2) *materials* used in the manufacture of the commodities named in (1) above, (except commodities in bulk), between the facilities of Epic Metals Corporation, at (a) Braddock, PA, (b) Lakeland, FL, (c) Oregon, OH, and (d) Chicago, IL, on the one hand, and, on the other, points in the US (except AK and HI), under continuing contract(s) with Epic Metals Corporation, of Braddock, PA. (Hearing site: Pittsburgh, PA, or Washington, DC.)

MC 133797 (Sub-275F), filed November 5, 1979. Applicant: J. B. HUNT TRANSPORT, INC., P.O. Box 130, Lowell, AR 72745. Representative: Paul R. Bergant (same address as applicant). Transporting (1) *sugar* (except in bulk), and (2) *materials, equipment, and supplies,* used in the manufacture and distribution of sugar, between Reserve and Kenner, LA, on the one hand, and, on the other, points in AL, AR, FL, GA, IL, IN, IA, KS, KY, MI, MS, MO, NE, NC, OH, OK, SC, TN, TX, VA, WI, and WV. (Hearing site: New Orleans, LA, or Washington, DC.)

MC 134286 (Sub-12F), filed November 6, 1979. Applicant: ILLINI EXPRESS, INC., P.O. Box 1564, Sioux City, IA 51102. Representative: Julie Humbert (same address as applicant). Transporting *such commodities* as are dealt in by wholesale and retail grocery business houses (except commodities in bulk), (1) from Rialto, CA, to points in CO, IA, and TX, and (2) from Byhalia, MS, to those points in the U.S. in and east of ND, SD, NE, CO, OK, and TX, (except MS, AL, and FL), restricted in (1) and (2) above to traffic originating at the named origins. (Hearing site: Denver, CO, or Sioux City, IA.)

Note.—Dual operations may be involved.

MC 134477 (Sub-370F), filed October 1, 1979. Applicant: SCHANNO TRANSPORTATION, INC., 5 West Mendota Road, West St. Paul, MN 55118. Representative: Thomas D. Fischbach, P.O. Box 43496, St. Paul, MN 55164. Transporting *pasta products,* from the facilities of C. F. Mueller Company, at or near Jersey City, NJ, to points in IL, IN, IA, KY, MI, OH, and WI. (Hearing site: St. Paul, MN.)

MC 134477 (Sub-371F), filed October 4, 1979. Applicant: SCHANNO TRANSPORTATION, INC., 5 West Mendota Road, West St. Paul, MN 55118. Representative: Thomas D. Fischbach, P.O. Box 43496, St. Paul, MN 55164. Transporting *foodstuffs* (except in bulk), from Hudson, IA, and points in MN, ND, and WI, to points in AL, AR, CO, CT, DE, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MS, MO, NE, NH, NJ, NY, NC, OH, OK, PA, RI, SC, TN, TX, VT, VA, WV, and DC, restricted to traffic originating at the named origins and destined to the indicated destinations. (Hearing site: St. Paul, MN.)

MC 134477 (Sub-376F), filed October 5, 1979. Applicant: SCHANNO TRANSPORTATION, INC., 5 West Mendota Road, West St. Paul, MN 55118. Representative: Thomas D. Fischbach, P.O. Box 43496, St. Paul, MN 55164. Transporting (1) *wearing apparel, and accessories* for wearing apparel and (2) *materials, equipment and supplies,* used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk), between points in the United States (except AK and HI), restricted to traffic originating at or destined to the facilities of Munsingwear, Inc. (Hearing site: St. Paul, MN.)

MC 134477 (Sub-382F), filed November 9, 1979. Applicant: SCHANNO TRANSPORTATION, INC., 5 West Mendota Road, West St. Paul, MN 55118. Representative: Thomas D. Fischbach, P.O. Box 43496, St. Paul, MN 55164. Transporting *air cleaner filter paper,* from Madisonville, KY, West Groton, MA, Rochester, MI, and Watertown and Greenwich, NY, to Frankfort, IN. (Hearing site: St. Paul, MN.)

MC 134477 (Sub-384F), filed November 13, 1979. Applicant: SCHANNO TRANSPORTATION, INC., 5 West Mendota Road, West St. Paul, MN 55118. Representative: Thomas D. Fischbach, P.O. Box 43496, St. Paul, MN 55164. Transporting *meats, meat products and meat by-products, and articles distributed by meat packing houses,* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the facilities of Hygrade Food Products Corp. at or near (a) Cherokee, Postville, Sioux City and Storm Lake, IA and (b) Omaha, NE, to points in AL, CT, DE, FL, GA, IL, IN, KY, ME, MD, MA, MI, MS, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VT, VA, WV, WI, and DC. (Hearing site: St. Paul, MN.)

MC 135797 (Sub-268F), filed October 5, 1979. Applicant: J. B. HUNT TRANSPORT, INC., P.O. Box 130, Lowell, AR 72745. Representative: Paul R. Bergant, P.O. Box 130, Lowell, AR 72745. Transporting (1) *foodstuffs, pet foods, and animal feeds,* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, (except commodities in bulk, in tank vehicles), between those points in the United States in and east of ND, SD, NE, CO, OK, and TX, restricted to traffic originating at or destined to the facilities of Carnation Company. (Hearing site: Los Angeles, CA, or Washington, DC.)

MC 135797 (Sub-276F), filed November 13, 1979. Applicant: J. B. HUNT TRANSPORT, INC., P.O. Box 130, Lowell, AR 72745. Representative: Paul

R. Bergant (same address as applicant). Transporting *canned and preserved foodstuffs*, from the facilities of Heinz USA, Div. of H. J. Heinz Co., at or near Muscatine and Iowa City IA, to points in AR, FL, KY, LA, OK, SC, TN, and TX, restricted to traffic originating at the named facilities and destined to the indicated destinations. (Hearing site: Des Moines, IA, or Washington, DC.)

MC 135936 (Sub-25F), filed November 9, 1979. Applicant: C & K TRANSPORT, INC., Box 205, Webster City, IA 50595. Representative: Thomas E. Leahy, Jr., 1980 Financial Center, Des Moines, IA 50309. Transporting *meats, meat products and meat byproducts, and articles distributed by meat-packing houses* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the facilities of Iowa Beef Processors, Inc., at or near Dakota City, NE, to points in IA, MN and SD, restricted to traffic originating at the named origin and destined to the indicated destinations. (Hearing site: Omaha, NE, or Kansas City, MO.)

MC 136897 (Sub-28F), filed October 1, 1979. Applicant: SWIFT TRANSPORTATION CO., INC., 335 West Elwood Road, P.O. Box 3902, Phoenix, AZ 85030. Representative: Donald E. Fernaays, 4040 East McDowell Road, Suite 320, Phoenix, AZ 85008. *Contract carrier*, transporting *iron and steel articles*, from Pueblo, CO, to points in ID, KS, MT, NE, ND, NM, NV, OK, OR, SD, TX, UT, WA, and WY, under continuing contract(s) with CF and I Steel Corporation, of Pueblo, CO. (Hearing site: Phoenix, AZ, or Pueblo, CO.)

Note.—Dual operations may be involved.

MC 138076 (Sub-19F), filed October 3, 1979. Applicant: HEAVY HAULING, INC., 1100 West Grand, Saline, KS 67401. Representative: Clyde N. Christey, Kansas Credit Union Building, 1010 Tyler, Suite 110L, Topeka, KS 66612. Transporting *iron and steel articles* (except oilfield commodities as described in 74 M.C.C. 459, 543, and earth drilling commodities), from Tulsa and Muskogee, OK, and the facilities of Nucor Steel, at or near Norfolk, NE, to points in Riley County, KS. (Hearing site: Kansas City, MO.)

MC 139906 (Sub-74F), filed October 9, 1979. Applicant: INTERSTATE CONTRACT CARRIER CORP., 2156 West 2200 South, P.O. Box 30303, Salt Lake City, UT 84125. Representative: Richard A. Peterson, 521 South 14th Street, P.O. Box 81849, Lincoln, NE 68501. Transporting *such commodities* as are dealt in or used by department stores (except foodstuffs and commodities in bulk), from the facilities of J. C. Penney, Inc., at Jersey City, NJ, to Reno, NV. (Hearing site: Lincoln, NE, or Salt Lake City, UT.)

Note.—Dual operations may be involved.

MC 142606 (Sub-69F), filed November 6, 1979. Applicant: WESCO TRANSPORTATION, INC., 4290 Elton Street, Baldwin Park, CA 91706. Representative: William J. Monheim, P.O. Box 1756, Whittier, CA 90609. *Contract carrier*, transporting *furniture parts, and vehicle hitches and couplers*, between points in the United States (except AK and HI), under continuing contract(s) with Hoover Universal, Inc., of Georgetown, KY. (Hearing site: Los Angeles, CA.)

MC 143127 (Sub-56F), filed October 3, 1970. Applicant: K. J. TRANSPORTATION, INC., 6070 Collett Road, Victor, NY 14564. Representative: Linda A. Calvo (same address as applicant). Transporting (1) *acids, chemicals, and chemical compounds, and materials, equipment, and supplies* used in the application of such commodities, from Waterloo, NY, to points in the United States (except AK and HI), (2) *synthetic latex, plastics, battery insulating partitions, and pulpboard*, from Owensboro, KY, to points in the United States (except AK and HI), and (3) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) and (2) above, from points in the United States (except AK and HI), to Waterloo, NY, and Owensboro, KY, restricted in (1), (2), and (3) above to traffic originating at or destined to the facilities of W. R. Grace & Co. (Hearing site: Buffalo, NY, or Boston, MA.)

Note.—Dual operations may be involved.

MC 143276 (Sub-24F), filed November 6, 1979. Applicant: WEAVER TRANSPORTATION CO., a corporation, 5452 Oakdale Road, Smyrna, GA 30080. Representative: James L. Brazee, P.O. Box 32309, Decatur, GA 30032. Transporting (1) *concrete reinforcing steel*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of concrete reinforcing steel, from the facilities of Florida Steel Corporation, at Atlanta, GA, and points in Fulton, Duluth, and Gwinnett Counties, GA, to points in Trousdale, Davidson, and Smith Counties, TN. (Hearing site: Atlanta, GA.)

Note.—Dual operations may be involved.

MC 144827 (Sub-38F), filed November 2, 1979. Applicant: DELTA MOTOR FREIGHT, INC., 2877 Fairsview, P.O. Box 18423, Memphis, TN 38118. Representative: J. Max Harding, P.O. Box 82028, Lincoln, NE 68501. Transporting (1) *paints, and caulking compounds*, and (2) *materials, equipment, and supplies* used in the manufacture of the commodities in (1) above, (except commodities in bulk), between the facilities of United Coatings, Inc., at (a) Charlotte, NC, (b) Chicago, IL, (c) Indianapolis, IN, and (d) Memphis, TN, on the one hand, and, on the other, those points in the United States in and east of MN, IA, MO, AR, and LA. (Hearing site: Chicago, IL.)

MC 145106 (Sub-14F), filed November 5, 1979. Applicant: EDINA CARTAGE CO., a corporation, Front Street, P.O. Box 42, Mauricetown, NJ 08329. Representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 11th Street NW., Washington, DC 20001. *Contract carrier*, transporting (1) *paper and paper products*, and (2) *materials and supplies* used in the manufacture of the commodities in (1) above (except commodities in bulk), between those points in the United States in and east of MN, IA, MO, KS, OK, and TX, restricted to traffic originating at or destined to the facilities of Scott Paper Company, under continuing contract(s) with Scott Paper Company, of Philadelphia, PA. (Hearing site: Philadelphia, PA.)

Note.—Dual operations may be involved.

MC 145337 (Sub-7F), filed November 2, 1979. Applicant: P.M.E., LTD., Box 181, Group 261, Rural Route 2, Winnipeg, MB, Canada R3C 2E6. Representative: Gene P. Johnson, P.O. Box 2471, Fargo, ND 58108. In foreign commerce only, transporting *meats, meat products and meat byproducts, and articles distributed by meat-packing houses*, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the ports of entry on the international boundary line between the United States and Canada in MT and ND, to points in CA. (Hearing site: Minneapolis or St. Paul, MN.)

Note.—Dual operations may be involved.

MC 145716 (Sub-4F), filed November 8, 1979. Applicant: INTERNATIONAL TRANSPORTATION SERVICE, INC., suite 1–M, 3300 Northeast Expressway NE., Atlanta, GA 30341. Representative: J. Michael May, suite 508, 1447 Peachtree Street NE., Atlanta, GA 30309. Transporting *copper tubing*, from the facilities of Spartan Copper Products, Inc., at Hillsboro, TX, to Belding and Greenville, MI. (Hearing site: Atlanta, GA, or Dallas, TX.)

Note.—Dual operations may be involved.

MC 146326 (Sub-6F), filed October 1, 1979. Applicant: JOHN ALGER, SR., d.b.a. ALGER TRANSPORTATION, 9811 Redman Avenue, Omaha, NE 68134. Representative: Marshall D. Becker, suite 610, 7171 Mercy Road, Omaha, NE 68106. Transporting *flour*, in bags, (1) from Omaha, NE, to Moline and Chicago, IL, and (2) from Fergus Falls, MN, to Chicago, IL, restricted in (1) and (2) above to traffice originating at the facilities of Con-Agra, Inc. (Hearing site: Omaha, NE.)

MC 146616 (Sub-4F), filed November 6, 1979. Applicant: B & H MOTOR FREIGHT, INC., 3314 East 51st Street, suite B, Tulsa, OK 74135. Representative: Fred Rahal, Jr., suite 305, Reunion Center, 9 East Fourth Street, Tulsa, OK 74103. *Contract carrier*, transporting (1) *structural steel and steel towers*, (2) *parts and accessories* for the commodities in (1) above, and (3) *materials and supplies* used in the manufacture and distribution of the commodities in (1) and (2) above, between the facilities of Riverside Industries, Inc., at (a) Tulsa, OK, and (b) Clearfield, UT, on the one hand, and, on the other, points in the United States (except AK and HI), under continuing contract(s) with Riverside Industries, Inc., of Tulsa, OK. (Hearing site: Tulsa, OK.)

MC 146647 (Sub-2F), filed May 29, 1979. Applicant: JIM STRATTON, d.b.a. THE STRATTON CO., 201 Second Street, Kaycee, WY 82639. Representative: Vincent J. Horn, Jr., suite 200, City Center Building, Casper, WY 82601. *Contract carrier*, transporting (1) *oil field machinery*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, from Seattle, WA, to Casper, WY, under continuing contract(s) with Herman L. Karst Enterprises, Inc., of Casper, WY. (Hearing site: Casper or Cheyenne, WY.)

MC 146717 (Sub-6F), filed May 31, 1979. Applicant: JACK MYER AND BUDDY C. MOORE, a partnership d.b.a. MIDWEST VIKING, Johnson, NE 68378. Representative: Richard D. Howe, 600 Hubbell Building, Des Moines, IA 50309. Transporting *lumber*, from points in CA and NV, to points in IA, IL, IN, MI, and WI. (Hearing site: Omaha, NE, or Des Moines, IA.)

MC 147547 (Sub-4F), filed October 8, 1979. Applicant: R & D TRUCKING CO., INC., Lauderdale Industrial Park, Florence, AL 35630. Representative: Roland M. Lowell, 618 United American Bank Building, Nashville, TN 37219. Transporting (1) *carpet runners and treads, chair pads, plastic tubing, and plastic stripping*, from the facilities of Intervinyls, Inc., at or near Muscle Shoals, AL, to points in the United States (except AK and HI), and (2) *materials, equipment, and supplies* used in the manufacture of the commodities in (1) above, in the reverse direction (Hearing site: Florence, AL.)

Note.—Dual operations may be involved.

MC 147636 (Sub-6F), filed November 9, 1979. Applicant: DICK WELLER, INC., Shoham Road, P.O. Box 313, Warehouse Point, CT 06088. Representative: Patrick A. Doyle, 60 Robbins Road, Springfield, MA 01104. Transporting *frozen potatoes*, from Clark and Sioux Falls, SD, and Kansas City and Independence, MO, to points in AL, CT, DE, FL, GA, IN, KY, LA, ME, MD, MA, MI, MS, MO, NE, NJ, NH, NY, NC, OH, PA, RI, SC, TN, TX, VT, VA, WV, IA, WI, MN, OK, IL, and DC. (Hearing site: Hartford, CT, or Washington, DC.)

MC 147806 (Sub-2F), filed October 5, 1979. Applicant: SOUTHERN HEAVY HAUL, INC., 5202 Industry Avenue, Pico Rivera, CA 90660. Representative: Milton W. Flack, 4311 Wilshire Boulevard, suite 300, Los Angeles, CA 90010. *Contract carrier*, transporting (1) *steel articles*, from the facilities of Sharon Steel Corp., at or near Farrell, PA, and Damascus Tube, a Division of Sharon Steel Corp., at or near Greenville, PA, to Lake Havasu, AZ, Los Angeles, San Francisco, and San Jose, CA, Verdi, NV, Portland, OR, and Beaumont and Houston, TX, (2) *steel billets*, from the facilities of The Steel Corporation of Texas at Houston TX, to Los Angeles, San Francisco, and San Jose, CA, Portland, OR, and Verdi, NV, and (3) *carbon steel tubing*, from the facilities of Southwest Tube Corporation, at Sand Springs, OK, to Los Angeles and San Francisco, CA, under continuing contract(s) in (1), (2), and (3), with The Steel Corporation of Texas, of Los Angeles, CA. (Hearing site: Los Angeles, CA.)

MC 148036 (Sub-2F), filed October 4, 1979. Applicant: RED WING TRANSPORTATION CORP., 3154 North Service Drive, Red Wing, MN 55066. Representative: Ronald N. Cobert, 1730 M Street, NW., suite 501, Washington, DC 20036. Transporting *general commodities* (except those of unusual value, classes A and B explosive, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between the facilities of Minnesota Inter-Modal Shippers Association, Inc., at or near Minneapolis, MN, on the one hand, and, on the other, Denver, CO, Atlanta, GA, Chicago, IL, Detroit, MI, New York, NY, Philadelphia, PA, and Dallas and Houston, TX. (Hearing site: Minneapolis, MN.)

Note.—Dual operations may be involved.

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Decided: March 3, 1980.
By the Commission, Review Board Number 1, Members Carleton, Joyce and Jones.

MC 2202 (Sub-627F), filed December 31, 1979. Applicant: ROADWAY EXPRESS, INC., P.O. Box 471, 1077 Gorge Boulevard, Akron, OH 44309. Representative: William O. Turney, suite 1010, 7101 Wisconsin Avenue, Washington, DC 20014. Over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) Between Rouses Point, NY and MA–VT State line: from Rouses Point over U.S. Hwy 2, then over U.S. Hwy 2 to junction VT Hwy 78, then over VT Hwy 78 to junction U.S. Hwy 7, then over U.S. Hwy 7 to the MA–VT State line and return over the same route. (2) Between Lyndonville, VT and the MA–VT State line, over U.S. Hwy 5. (3) Between Laconia, NH and the MA–NH State line, over U.S. Hwy 3. (4) Between Burlington, VT and Portsmouth, NH: from Burlington over U.S. Hwy 2 to junction VT Hwy 14, then over VT Hwy 14 to junction U.S. Hwy 4, then over U.S. Hwy 4 to Portsmouth, NH and return over the same route. (5) Between Fair Haven, NY and Lebanon, NH, over U.S. Hwy 4. (6) Between Hoosick, NY and Portsmouth, NH: from Hoosick over NY Hwy 7 to junction VT Hwy 9, then over VT Hwy 9 to junction NH Hwy 9, then over NH Hwy 9 to junction NH Hwy 101, then over NH Hwy 101 to Portsmouth, NH and return over the same route. (7) Between Johnson and Burlington, VT, over VT Hwy 15. (8) Between Montpelier, VT and junction U.S. Hwy 4 and VT Hwy 100: from Montpelier over VT Hwy 12 to junction VT Hwy 107, then over VT HWY 107 to junction VT Hwy 100, then over VT Hwy 100 to junction U.S. Hwy 4, and return over the same route. (9) Between junction U.S. Hwy 4 and VT Hwy 12 and junction U.S. Hwy 5, over VT Hwy 12. (10) Between junction U.S. Hwy 7 and VT Hwy 103 and junction U.S. Hwy 5 and VT Hwy 103, over VT Hwy 103. (11) Between Walpole, NH and the MA–NH State line, over NH Hwy 12. (12) Between the VT–NH State line and Rochester, NH: from the VT–NH State line over NH Hwy 103 to junction NH Hwy 114, then over NH Hwy 114 to junction U.S. Hwy 202, then over U.S. Hwy 202 to Rochester and return over the same route. (13) Between

junction U.S. Hwy 202 and NH Hwy 114 and the NH–MA State line: from junction U.S. Hwy 202 and NH Hwy 114 over U.S. Hwy 202 to junction NH Hwy 9, then over NH Hwy 9 to junction NH Hwy 10, then over NH Hwy 10 to NH–MA State line and return over the same route. (14) Between junction U.S. Hwy 202 and NH Hwy 9 and the NH–MA State line, over U.S. Hwy 202. (15) Between Manchester, NH and the NH–MA State line, over NH Hwy 28. (16) Between Rochester, NH and the NH–MA State line, over NH Hwy 125. (17) Between Laconia and Rochester, NH: from Laconia over U.S. Hwy 3 to junction NH Hwy 11, then over NH Hwy 11 to Rochester and return over the same route. (18) Between Rochester, NH and Skowhegan, ME: from Rochester over U.S. Hwy 202 to junction U.S. Hwy 201, then over U.S. Hwy 201 to Skowhegan and return over the same route. (19) Between Skowhegan and Rumford, ME: from Skowhegan over Alternate U.S. Hwy 201 to junction U.S. Hwy 2, then over U.S. Hwy 2 to Rumford, ME and return over the same route. (20) Between Auburn and Wilton, ME over ME Hwy 4. (21) Between Bath, and Ellsworth, ME, over U.S. Hwy 1. (22) Between Ellsworth and Guilford, ME: from Ellsworth over ME Hwy 15 to Guilford and return over the same route. (23) Between Sangerville, and Bangor, ME: from Sangerville over ME Hwy 23 to junction ME Hwy 22, then over ME Hwy 22 to Bangor, and return over the same route. (24) Between Bangor, ME and junction Alternate U.S. Hwy 1 and U.S. Hwy 1, over Alternate U.S. Hwy 1. (25) Between Gorham and Standish, ME, over ME Hwy 25. (26) Between Augusta, and Belfast, ME, over ME Hwy 3. (27) Between Augusta and Rockland, ME, over ME Hwy 17, serving all intermediate points and serving points in NH in and south of Sullivan, Merrimack, BelknaO-Belknap and Strafford Counties, NH as off-route points in (1) through (27) above. Applicant intends to tack these regular routes with its existing authority. (Hearing site: Concord, NH.)

MC 2253 (Sub-103F), filed December 7, 1979. Applicant: CAROLINA FREIGHT CARRIERS CORP., P.O. Box 697, Cherryville, NC 28021. Representative: J. S. McCallie (same address as applicant). Transporting *particleboard,* between Fort Valley, GA, on the one hand, and, on the other, points in AL, FL, LA, MS, TX, and VA. (Hearing site: Atlanta, GA.)

MC 3062 (Sub-46F), filed November 16, 1979. Applicant: INMAN FREIGHT SYSTEM INC., 321 North Spring Avenue, Cape Girardeau, MO 63701. Representative: Guy H. Boles (same address as applicant). Over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment), serving the facilities of Soundesign Corporation at or near Santa Claus, IN as an off-route point in connection with carrier's otherwise authorized regular route operations. (Hearing site: Evansville, IN, or St. Louis, MO.)

MC 9812 (Sub-17F), filed November 19, 1979. Applicant: C. F. KOLB TRUCKING CO., INC., Rural Route 1, Box 294, Mount Vernon, IN 47620. Representative: Constance J. Goodwin, Suite 800, Circle Tower, 5 East Market Street, Indianapolis, IN 46204. Transporting (1) *steel beams, joists, trusses, sheets and decking,* from the facilities of Vulcraft at St. Joe, IN, to points in AL, AR, GA, IL, KY, MI, MO, MS, NC, NY, OH, PA, SC, TN, VA, and WV and (2) *materials, equipment and supplies* (except in bulk), used in the manufacture and distribution of commodities in (1) in the reverse direction. (Hearing site: St. Louis, MO, or Chicago, IL.)

MC 14702 (Sub-85F), filed December 7, 1979. Applicant: OHIO FAST FREIGHT, INC., P.O. Box 808, Warren, OH 44482. Representative: Paul F. Beery, 275 East State Street, Columbus, OH 43215. Transporting (1) *iron and steel articles, aluminum and aluminum articles, auto parts, machinery and machinery parts, construction materials,* and (2) *equipment, materials, and supplies* used in the manufacture of the commodities in (1) above (except commodities in bulk and commodities which because of size or weight require the use of special equipment), between points in IL, IN, KY, MD, MI, NJ, NY, OH, PA, WV, WI, and those points in MO on and east of U.S. Hwy 63. (Hearing site: Columbus, OH.)

MC 15242 (Sub-13F), filed November 26, 1979. Applicant: CAUTHEN GIN & BAG CO., Route 4, Box 550, Monroe, NC 28110. Representative: Eric Meierhoefer, Suite 423, 1511 K Street NW., Washington, DC 20005. Transporting *office furniture* from the facilities of Vanguard Business Furniture, Inc. at or near Brooklyn, NY to points in the US in and east of LA, AR, MO, IA, and MN. (Hearing site: New York, NY.)

MC 16682 (Sub-96F), filed November 21, 1979. Applicant: MURAL TRANSPORT, INC., P.O. Box 1785, North Brunswick, NJ 08902. Representative: W. C. Mitchell, 370 Lexington Avenue, New York, NY 10017. Transporting *household appliances and equipment, materials and supplies* used in the manufacture and distribution of household appliances (except commodities in bulk) from the facilities of General Electric Co., at or near Louisville, KY, to points in IL, IN, MI, OH, those in WI on and east of U.S. Hwy 45, those in TN on and east of INT Hwy 65, and those in Buncombe County, NC. (Hearing site: Louisville, KY or Washington, DC.)

MC 16872 (Sub-24F), filed November 9, 1979. Applicant: WILLIAM MIRRER d.b.a., MIRRER'S TRUCKING, 100 East 25th Street, Paterson, NJ 07524. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. Transporting *plastic granules,* between the facilities of Mirrer at Houston, TX, on the one hand, and, on the other, points in the U.S. (except AK and HI). (Hearing site: New York, NY or Washington, DC.)

MC 16903 (Sub-77F), filed December 26, 1979. Applicant: MOON FREIGHT LINES, INC., P.O. Box 1275, Bloomington, IN 47401. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. Transporting (1) *Marble and marble products, ground limestone,* in bags, and *granite,* from the facilities of Vermont Marble Company and OMYA, Inc., in Rutland County, VT to points in CT, DE, ME, MD, MA, NH, NJ, NY, PA, RI, and Washington, DC, and (2) *ground limestone,* in bags, from Gary, IN to points in AL, AR, CO, CT, DE, FL, GA, IA, KS, LA, ME, MD, MA, MN, MS, NE, NH, NJ, NY, NC, ND, OK, PA, RI, SC, SD, TN, TX, VT, VA, WV, WI, and Washington, DC. (Hearing site: Montpelier, VT or Washington, DC.)

MC 24583 (Sub-35F), filed September 24, 1979. Applicant: FRED STEWART CO., a corporation, P.O. Box 665, Magnolia, AR 71753. Representative: James M. Duckett, 927 Pyramid Life Building, Little Rock, AR 72201. Transporting *sodium hydrosulfide and waste petroleum refinery sulfide,* in bulk, in tank vehicles, from points in Union County, AR, to points in AL, LA, MS, TN, TX, OK, MO, KS, NC, FL, KY, and AZ. (Hearing site: Little Rock, AR.)

MC 31533 (Sub-18F), filed December 3, 1979. Applicant: SOUTH BEND FREIGHT LINE, INC., 1200 South Olive Street, South Bend, IN 46624. Representative: Richard P. Wright (same as applicant). Over regular routes, transporting (1) *metal castings, machined parts,* and *machinery parts;* and (2) *equipment, materials, and supplies* used in the manufacture of commodities in (1) above (except commodities in bulk and those requiring special equipment); serving the facilities of Beloit Foundry Company, Division of

Beloit Corporation, South Beloit, IL, as an off-route point in connection with carrier's regular route operations. The sole purpose of this application is to substitute single line for present joint line operations.

MC 32882 (Sub-134F), filed December 10, 1979. Applicant: MITCHELL BROS. TRUCK LINES, a corporation, 3841 North Columbia Boulevard, P.O. Box 17039, Portland, OR 97217. Representative: David J. Lister (same address as applicant). Transporting *materials, equipment, and supplies* used in the construction, manufacturing and erection of pollution control and environment control commodities, between those points in the United States in and west of MI, OH, KY, TN, AR, and LA (except AK and HI), restricted to the transportation of traffic originating at or destined to the facilities used by Contaminant Controls Corp. (Hearing site: Salt Lake City, UT.)

MC 32882 (Sub-135F), filed December 10, 1979. Applicant: MITCHELL BROS. TRUCK LINES, a corporation, 3841 North Columbia Boulevard, P.O. Box 17039, Portland, OR 97217. Representative: David J. Lister (same address as applicant). Transporting *lift trucks, hydraulic platforms, and parts* thereof, from the facilities of Mark Industries, at or near Carson, CA, to those points in the United States in and west of MI, OH, KY, TN, and LA (except CA, HI, and AK), restricted to the transportation of traffic originating at the facilities of Mark Industries. (Hearing site: Los Angeles, CA.)

MC 35883 (Sub-5F), filed November 9, 1979. Applicant: BRANDER BUS LINES, INC., 20 Slater Street, Rehoboth, MA 02769. Representative: James M. Burns, 1383 Main Street, suite 413, Springfield, MA 01103. Over regular routes, transporting *passengers and their baggage, and express packages,* between New Bedford, MA and Boston, MA, serving all intermediate points: from New Bedford, MA over MA Hwy 140 to junction MA Hwy 24, then over MA Hwy 24 to junction MA Hwy 128, then over MA Hwy 128 to junction MA Hwy 3, then over MA Hwy 3 to Boston, MA, and return over the same route. (Hearing site: Providence, RI or Boston, MA.)

MC 36422 (Sub-11F), filed December 4, 1979. Applicant: MERCHANTS CONTRACT DELIVERIES, INC. d.b.a. WARWICK DELIVERY SERVICE, 1212 East 19th, Kansas City, MO 64108. Representatives: Leonard Rose and David W. Howard, 601 West 47th, Kansas City, MO 64112. *Contract carrier* transporting *such merchandise* as is dealt in by retail department and mail order stores between the facilities of Montgomery Ward & Co., Inc. at Des Moines, IA, on the one hand, and, on the other, the facilities of Montgomery Ward & Co., Inc. at Omaha and Lincoln, NE, under continuing contract(s) with Montgomery Ward & Co., Inc., of Kansas City, Mo. (Hearing site: Kansas City, MO.)

MC 42352 (Sub-1F), filed August 6, 1979. Applicant: DANIS TRANSPORTATION CO., INC., 18 Keough Street, Pawtucket, RI 02861. Representative: Michael T. Stamp (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, automobiles, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment (1) between Providence, RI, and Lawrence, MA, from Providence over Interstate Hwy 95 to junction Interstate Hwy 93, then over Interstate Hwy 93 to Lawrence, and return over the same route, (2) between junction Interstate Hwy 95 and U.S. Hwy 3 and Lowell, MA, over U.S. Hwy 3, (3) between Lawrence and Haverhill, MA, over Interstate Hwy 495, (4) between Providence, RI, and Worcester, MA, from Providence over RI Hwy 146 to the RI–MA State line, then over MA Hwy 146 to Worcester, and return over the same route, serving the intermediate point of Uxbridge, MA, and the off-route point of Westboro, MA, and (5) between Providence, RI, and New Bedford, MA, over Interstate Hwy 195 (or U.S. Hwy 6) serving the intermediate points of Fall River and Westport, MA. (Hearing site: Providence, RI or Boston, MA.)

MC 48632 (Sub-16F), filed August 28, 1979. Applicant: WILLIG FREIGHT LINES, a corporation, 123 Loomis Street, San Francisco, CA 94124. Representative: Robert L. LaVine, 415 Hearst Building, San Francisco, CA 94103. Transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment): A. regular routes: (1) Between San Francisco and Notleys Landing, CA, over CA Hwy 1. (2) Between Cloverdale and Los Angeles, CA, over U.S. Hwy 101. (3) Between Half Moon Bay and Hayward, CA, over CA Hwy 92. (4) Between San Gregorio and Livermore, CA, over CA Hwy 84. (5) Between Santa Cruz and Los Gatos, CA, over CA Hwy 9. (6) Between San Francisco and junction CA Hwy 35 and CA Hwy 9, CA, over CA Hwy 35. (7) Between San Francisco and San Jose, CA, over Interstate Hwy 280. (8) Between San Francisco and San Jose, CA, over CA Hwy 82. (9) Between San Rafael and Santa Cruz, CA, over CA Hwy 17. (10) Between Mountain View and Milpitas, CA, over CA Hwy 237. (11) Between Saratoga and Mountain View, CA, over CA Hwy 85. (12) Between San Jose and Cordelia, CA, over Interstate Hwy 680. (13) Between Watsonville and junction CA Hwy 152 and CA Hwy 99, near Chowchilla, CA, over CA Hwy 152. (14) Between Watsonville and junction CA Hwy 129 and CA Hwy 101, CA, over CA Hwy 129. (15) Between Castroville and junction CA Hwy 156 and CA Hwy 152, over CA Hwy 156. (16) Between Gilroy and Hollister, CA, over CA Hwy 25. (17) Between Avila Hot Springs and Port San Luis, CA, over unnumbered road. (18) Between Concord and Clayton, CA, over Concord Road. (19) Between Monterey and Salinas, CA, over CA Hwy 68. (20) Between Castroville and Salinas, CA, over CA Hwy 183. (21) Between King City and Paso Robles, CA, over County Hwy G14. (22) Between Lockwood and junction County Hwy G18 and U.S. Hwy 101, CA, over County Hwy G18. (23) Between Cambria and San Juan Capistrano, CA, over CA Hwy 1. (24) Between Cholame and junction CA Hwy 46 and CA Hwy 1, CA, over CA Hwy 46. (25) Between Morro Bay and Shandon, CA, over CA Hwy 41. (26) Between San Luis Obispo and Arroyo Grande, CA, over CA Hwy 227. (27) Between Guadalupe and Santa Maria, CA, over CA Hwy 166. (28) Between Santa Maria and Los Alamos, CA, over CA Hwy 135. (29) Between Creston and Santa Margarita, CA: from Creston over CA Hwy 229 to junction CA Hwy 229 and CA Hwy 58, CA, then over CA Hwy 58 to Santa Margarita. (30) Between Santa Maria and Garey, CA, over CA Hwy 176. (31) Between Lompoc and Santa Ynez, CA, over CA Hwy 246. (32) Between Los Olivos and Santa Barbara, CA, over CA Hwy 154. (33) Between Santa Barbara and Carpenteria, CA, over CA Hwy 192. (34) Between Carpenteria and Santa Paula, CA, over CA Hwy 150. (35) Between Ventura and Mira Monte, CA, over CA Hwy 33. (36) Between Ventura, Castaic Junction, CA, over CA Hwy 126. (37) Between Saticoy and Sunland, CA, over CA Hwy 118. (38) Between Fillmore and Thousand Oaks, CA, over CA Hwy 23. (39) Between Oxnard and Somis, CA, over CA Hwy 34. (40) Between Chatsworth and Topanga Beach, CA, over CA Hwy 27. (41) Between Guerneville and Cotati, CA, over CA Hwy 116. (42) Between Sebastopol and Valley Springs, CA, over CA Hwy 12. (43) Between Petaluma and junction CA Hwy 116 and CA Hwy 121, near Schellville, CA, over CA Hwy 116.

(44) Between Napa and junction CA Hwy 121 and CA Hwy 37, near Sears Point, CA, over CA Hwy 121. (45) Between Ignacio and Vallejo, CA, over CA Hwy 37. (46) Between Calistoga and Vallejo, CA, over CA Hwy 29. (47) Between Geyerserville and Calistoga, CA, over CA Hwy 128. (48) Between San Francisco and Weimar, CA, over Interstate Hwy 80. (49) Between Emeryville and Oakland, CA, over CA Hwy 13, (50) Between Richmond and Oakland, CA, over CA Hwy 123. (51) Between Marysville and Sacramento, CA, over CA Hwy 70. (52) Between Marysville and junction CA Hwy 65 and CA Hwy 16, CA, over CA Hwy 65. (53) Between Tudor and junction CA Hwy 113 and CA Hwy 12, CA, over CA Hwy 113. (54) Between Sycomore and Knights Landing, CA, over CA Hwy 45. (55) Between Marysville and Meridian, CA, over CA Hwy 20. (56) Between Alta Sierra and Pilot Hill, CA, over CA Hwy 49. (57) Between Sacramento and El Darado Hills, CA, over U.S.. Hwy 50. (58) Between Vacaville and junction Interstate Hwy 505 and Interstate Hwy 5, near Dunnigan, CA, over Interstate Hwy 505. (59) Between Madison and Sacramento, CA, over CA Hwy 16. (60) Between the junction Interstate Hwy 80 and Interstate Hwy 880, near West Sacramento, CA and junction Interstate Hwy 880 and Interstate Hwy 80, near North Highlands, CA, over Interstate Hwy 880. (61) Between Oakland and Hayward, CA, over CA Hwy 185. (62) Between San Lorenzo and Warm Springs, CA, over CA Hwy 238. (63) Between Oakland and junction Interstate Hwy 580 and Interstate Hwy 5, CA, over Interstate Hwy 580. (64) Between the junction of Interstate Hwy 580 and Interstate Hwy 205, CA, and the Junction of Interstate Hwy 205 and Interstate Hwy 5, CA, over Interstate Hwy 205. (65) Between Oakland and Concord, CA, over CA Hwy 24. (66) Between Hercules and Farmington, CA, over CA Hwy 4. (67) Between Vallejo and Benecia, CA, over Interstate Hwy 780. (68) Between Oakland and San Leandro, CA, over CA Hwy 61. (69) Between Sacramento and junction CA Hwy 160 and CA Hwy 4, near Antioch, CA, over CA Hwy 160. (70) Between Arbuckle and San Ysidro, CA, over Interstate Hwy 5. (71) Between Yuba City and junction CA Hwy 99 and Interstate Hwy 5, near Wheeler Ridge, CA, over CA Hwy 99. (72) Between Sacramento and Live Oak, CA, over CA Hwy 16. (73) Between Lincoln and Newcastle, CA, over CA Hwy 193. (74) Between Ione and junction CA Hwy 104 and CA Hwy 99, near Galt, CA, over CA State Hwy 104. (75) Between Stockton and Ione, CA: From Stockton, CA, over CA Hwy 88 to junction CA Hwy 88 and CA Hwy 124, then over CA Hwy 124 to Ione, CA. (76) Between Winters, CA and junction CA Hwy 128 and Interstate Hwy 505 CA, over CA Hwy 128. (77) Between Stockton and Valley Springs, CA, over CA Hwy 26. (78) Between Sacramento and Stockton, CA, over County Hwy J8. (79) Between Galt and Stockton, CA, over County Hwy J10. (80) Between Oakdale, CA and junction CA Hwy 120 and Interstate Hwy 5, near Lathrop, CA, over CA Hwy 120. (81) Between Modesto and Oakdale, CA, over CA Hwy 108. (82) Between La Grange, CA and junction CA Hwy 132 and Interstate Hwy 580, CA, over CA Hwy 132. (83) Between Salida, CA and junction CA Hwy 219 and CA Hwy 108, CA, over CA Hwy 219. (84) Between the junction of Interstate Hwy 5 and CA Hwy 33, and junction CA Hwy 33 and Lokern Road, near Button Willow, CA, over CA Hwy 33. (85) Between Taft and Maricopa, CA, over CA Hwy 33. (86) Between Turlock, CA and junction CA Hwy 165 and Interstate Hwy 5, CA, over CA Hwy 165. (87) Between Gustine and Planada, CA, over CA Hwy 140. (88) Between Snelling, CA and junction CA Hwy 59 and CA Hwy 152, CA, over CA Hwy 59. (89) Between the junction CA Hwy 33 and CA Hwy 145 and junction CA Hwy 145 and CA Hwy 41, CA, over CA Hwy 145. (90) Between Kettleman City, CA and junction CA Hwy 41 and CA Hwy 145, CA, over CA Hwy 41. (91) Between Highway City and Clovis, CA, over CA Hwy 168. (92) Between Mendota, CA and junction CA Hwy 180 and CA Hwy 63, CA, over CA Hwy 180. (93) Between Tulare, CA and junction CA and CA Hwy 180, CA, over CA Hwy 63. (94) Between Selma, CA and junction CA and Interstate Hwy 5, CA, over CA Hwy 43. (95) Between Kingsburg and Elderwood, CA, over CA Hwy 201. (96) Between the junction CA Hwy 198 and CA Hwy 245, and junction CA Hwy 245 and County Road J40, CA, over CA Hwy 245. (97) Between Visalia, CA and junction CA Hwy 216 and CA Hwy 198, CA, over CA Hwy 216. (98) Between Coalinga, CA and junction CA Hwy 198 and CA Hwy 216, CA, over CA Hwy 198. (99) Between Bakersfield, CA and junction CA Hwy 65 and CA Hwy 198, CA, over CA Hwy 65. (100) Between Corcoran and Lindsay, CA, over CA Hwy 137. (101) Between Porterville and Tipton, CA, over CA Hwy 190. (102) Between Taft and Greenfield, CA, over CA Hwy 119. (103) Between Keene and Button Willow, CA, over CA Hwy 58. (104) Between Delano and Woody, CA, over CA Hwy 155. (105) Between Blackwells Corner and Famoso, CA, over CA Hwy 46. (106) Between Maricopa and Mettler, CA, over CA Hwy 166. (107) Between the junction CA Hwy 58 and CA Hwy 223, near Bealville, CA and junction CA Hway 223 and Interstate Hwy 5, CA, over CA Hwy 223. (108) Between San Diego, CA and junction Interstate Hwy 15 and CA Hwy 30, CA, over Interstate Hwy 15. (109) Between San Bernardino, CA and junction Interstate Hwy 15E and Interstate Hwy 15, near Murrieta, CA, over Interstate Hwy 15E. (110) Between Cabazon and Santa Monica, CA, over Interstate Hwy 10. (111) Between Beaumont and Los Angeles, CA, over CA Hwy 60. (112) Between Riverside and Hermosa Beach, CA, over CA Hwy 91. (113) Between San Dimas and Redlands, CA, over CA Hwy 30. (114) Between Corona and Pomona, CA, over CA Hwy 71. (115) Between Beaumont and Sunshine Summit, CA, over CA Hwy 79. (116) Between Mountain Center and San Juan Capistrano, CA, over CA Hwy 74. (117) Between San Bernardino and San Dimas, CA, over CA Hwy 66. (118) Between Aguanga and Cahuilla, CA, over CA Hwy 371. (119) Between San Antonio Heights, CA and junction CA Hwy 83 and CA Hwy 71, CA, over CA Hwy 83. (120) Between Oceanside, CA and junction CA Hwy 76 and CA Hwy 79, CA, over CA Hwy 76. (121) Between Alpine and Ocean Beach, CA, over Interstate Hwy 8. (122) Between Carlsbad and Santa Ysabel, CA, over CA Hwy 78. (123) Between El Cajon and Ramona, CA, over CA Hwy 67. (124) Between San Ysidro, CA and junction Interstate Hwy 805 and Interstate Hwy 5, CA, over Interstate Hwy 805. (125) Between Jamul and San Diego, CA, over CA Hwy 94. (126) Between National City and El Cajon, CA, over CA Hwy 54. (127) Between Coronado and Palm City, CA, over CA Hwy 75. (128) Between San Fernando and Irvine, CA, over Interstate Hwy 405. (129) Between Pasadena and San Pedro, CA, over CA Hwy 11. (130) Between Alhambra and Long Beach, CA, over CA Hwy 7. (131) Between Duarte and Los Alamitos, CA, over Interstate Hwy 605. (132) Between San Fernando, CA and junction Interstate Hwy 210 and Interstate Hwy 10, near Pomona, CA, over Interstate Hwy 210. (133) Between Pasadena and Long Beach, CA, over CA Hwy 19. (134) Between Playa Del Ray and Norwalk, CA, over CA Hwy 42. (135) Between Hollywood and Pasadena, CA, over CA Hwy 134. (136) Between Costa Mesa and Olive, CA, over CA Hwy 55. (137) Between Orange, CA and junction CA Hwy 57 and Interstate Hwy 10, CA, over CA Hwy 57. (138) Between Azusa and Huntington Beach, CA, over CA Hwy 39. (139)

Between Los Angeles and Anaheim, CA, over CA Hwy 72. (140) Between La Habra, CA and junction CA Hwy 90 and CA Hwy 91, CA, over CA Hwy 90. (141) Between Healdsburg and Cloverdale, CA: From Healdsburg, CA, over Dry Creek Road to junction Dry Creek Road and Dutcher Creek Road, then over Dutcher Creek Road to Cloverdale, CA. (142) Between Los Angeles, CA and Tucson, AZ, serving all intermediate points, except that there shall be no service between Cabazon, CA and Tonapah, AZ, but serving Cabazon, CA and Tonapah, AZ, over Interstate Hwy 10. (143) Between Beardsley and Apache Junction, AZ, over U.S. Hwy 60. (144) Between Apache Junction and Sahuarita, AZ, over U.S. Hwy 89. (145) Between Mesa, AZ and junction AZ Hwy 87 and Interstate Hwy 10, AZ, over AZ Hwy 87. (146) Between Mesa and Casa Grande, AZ, over AZ Hwy 93. (147) Between Phoenix and Buckeye, AZ, over AZ Hwy 85. Serving all intermediate points on 1 through 147, except as may be otherwise specifically indicated. B. Off route points located in the following California counties: (a) In Fresno County: (A) Caruthers—In connection with 90 above. (B) Huron—In connection with 98 above. (C) Laton—In connection with 94 above. (D) Parlier—In connection with 71 above. (E) Reedley—In connection with 93 above. (F) Riverdale—In connection with 90 above. (G) San Joaquin—In connection with 89 above. (H) Tranquillity—In connection with 92 above. (b) In Kern County: (A) Lamont—In connection with 107 above. (B) Tupman—In connection with 102 above. (c) In Merced County: (A) Le Grand—In connection with 71 above. (d) In Placer County: (A) Sunset Whitney Ranch—In connection with 52 above. (e) In Riverside County: (A) Lakeview—In connection with 109 above. (B) Mira Loma—In connection with 111 above. (f) In San Diego County: (A) Camp Pendleton—In connection with 70 above. (B) Fallbrook—In connection with 108 above. (C) La Jolla—In connection with 70 above. (D) Poway—In connection with 108 above. (E) Valley Center—In connection with 120 above. (g) In Santa Barbara County: (A) Casmalia—In connection with 23 above. (B) Vandenburg A.F.B.—In connection with 23 above. (h) In Sonoma County: (A) Asti—In connection with 2 above. (i) In Stanislaus County: (A) Hughson—In connection with 71 above. (j) In Tulare County: (A) Alpaugh—In connection with 94 above. (B) Dinuba—In connection with 95 above. (C) New London—In connection with 101 above. (D) Richgrove—In connection with 104 above. (E) Woodville—In connection with 101 above. C. Off-route points located in the following Arizona counties: (a) In Maricopa County: (A) Chandler Heights—In connection with 145 above. (B) Gilbert—In connection with 143 above. (C) Higley—In connection with 143 above. (D) Scottsdale—In connection with 143 above. (E) Williams A.F.B.—In connection with 143 above. (b) In Pima County: (A) Esperanza Mine Site—In connection with 144 above. (B) Mission Union Mine Site—In connection with 144 above. (C) San Xavier Mine Site—In connection with 144 above. (D) Sierrita Mine Site—In connection with 144 above. (E) Twin Buttes Mine Site—In connection with 144 above. (c) In Pinal County: (A) Eloy—In connection with 142 above. (B) Maricopa—In connection with 142 above. (C) Olberg—In connection with 145 above. (D) Queen Creek—In connection with 143 above. (E) Rittenhouse—In connection with 143 above. (F) Sacaton—In connection with 145 above. D. Irregular routes: (1) Within the San Francisco Territory as described in Note A. (2) Within the Los Angeles Basin Territory as described in Note B.

Note A.—San Francisco territory: San Francisco Territory includes all the City of San Jose and that area embraced by the following boundary: Beginning at the point the San Francisco-San Mateo County Line meets the Pacific Ocean; thence easterly along said County Line to a point one mile west of State Highway 82; southerly along an imaginary line one mile west of and paralleling State Highway 82 to its intersection with Southern Pacific Company right-of-way at Arastradero Road; southeasterly along the Southern Pacific Company right-of-way to Pollard Road, including industries served by the Southern Pacific Company spur line extending approximately two miles southwest from Simla to Permanente; easterly along Pollard Road to W. Parr Avenue; easterly along W. Parr Avenue to Capri Drive; southerly along Capri Drive to Division Street; easterly along Division Street to the Southern Pacific Company right-of-way; southerly along the Southern Pacific right-of-way to the Campbell-Los Gatos City Limits; easterly along said limits and the prolongation thereof to South Bascom Avenue (formerly San Jose-Los Gatos Road); northeasterly along South Bascom Avenue to Foxworthy Avenue; easterly along Foxworthy Avenue to Almaden Road; southerly along Almaden Road to Hillsdale Avenue; easterly along Hillsdale Avenue to State Highway 82; northwesterly along State Highway 82 to Tully Road; northeasterly along Tully Road and the prolongation thereof to White Road; northwesterly along White Road to McKee Road; southwesterly along McKee Road to Capitol Avenue; northwesterly along Capitol Avenue to State Highway 238 (Oakland Road); northerly along State Highway 238 to Warm Springs; northerly along State Highway 238 (Mission Blvd.) via Mission San Jose and Miles to Hayward; northerly along Foothill Blvd. and MacArthur Blvd. to Seminary Avenue; easterly along Seminary Avenue to Mountain Blvd.; northerly along Mountain Blvd. to Warren Blvd. (State Highway 13); northerly along Warren Blvd. to Broadway Terrace; westerly along Broadway Terrace to College Avenue; northerly along College Avenue to Dwight Way; easterly along Dwight Way to the Berkeley-Oakland Boundary Line; northerly along said boundary line to the Campus Boundary of the University of California; westerly, northerly and easterly along the campus boundary to Euclid Avenue; northerly along Euclid Avenue to Marin Avenue; westerly along Marin Avenue to Arlington Avenue; notherly along Arlington Avenue to San Pablo Avenue (State Highway 123); northerly along San Pablo Avenue to and including the City of Richmond to Point Richmond; southerly along an imaginary line from Point Richmond to the San Francisco waterfront at the foot of Market Street; westerly along said waterfront and shoreline to the Pacific Ocean; southerly along the shoreline of the Pacific Ocean to point of beginning.

Note B.—Los Angeles basin territory: Los Angeles Basin Territory includes that area embraced by the following boundary: Beginning at the point the Ventura County-Los Angeles County Boundary Line intersects the Pacific Ocean; thence northeasterly along said county line to the point it intersects State Highway 118, approximately two miles west of Chatsworth; easterly along State Highway 118 to Sepulveda Boulevard; northerly along Sepulveda Boulevard to Chatsworth Drive; northeasterly along Chatsworth Drive to the corporate boundary of the City of San Fernando; westerly and northerly along said corporate boundary of the City of San Fernando to Maclay Avenue; northeasterly along Maclay Avenue and its prolongation to the Angeles National Forest Boundary; southeasterly and easterly along the Angeles National Forest and San Bernandino National Forest Boundary to Mill Creek Road (State Highway 38); westerly along Mill Creek Road to Bryant Street; southerly along Bryant Street to and including the unincorporated community of Yucaipa; westerly along Yucaipa Boulevard to Interstate Highway 10; northwesterly along Interstate Highway 10 to Redlands Boulevard; northwesterly along Redlands Boulevard to Barton Road; westerly along Barton Road to La Cadena Drive; southerly along La Cadena Drive to Iowa Avenue; southerly along Iowa Avenue to State Highway 60; southeasterly along State Highway 60 and U.S. Highway 395 to Nuevo Road; easterly along Nuevo Road via Nuevo and Lakeview to State Highway 79; southerly along State Highway 79 to State Highway 74; thence westerly to the corporate boundary of the City of Hemet; southerly, westerly and northerly along said corporate boundary to The Atchison, Topeka & Santa Fe right-of-way; southerly along said right-of-way to Washington Road; southerly along Washington Road through and including the unincorporated community of Winchester to Benton Road; westerly along Benton Road to Winchester Road (State Highway 79) to Jefferson Avenue; southerly along Jefferson Avenue to U.S. Highway 395; southerly along

U.S. Highway 395 to the Riverside County-San Diego County Boundary Line; westerly along said boundary line to the Orange County-San Diego County Boundary Line; southerly along said boundary line to the Pacific Ocean; northwesterly along the shoreline of the Pacific Ocean to point of beginning, including the point of March Air Force Base.

E. Regular route—Serving no intermediate points, as alternate routes for operating convenience only in conjunction with carrier's regular-route and irregular-route operations: (1) Between Alpine, CA and junction Interstate Hwy 8 and Interstate Hwy 10, near Casa Grande, AZ, over Interstate Hwy 8. (2) Between Cabazon and EL Centro, CA: From Cabazon over Interstate Hwy 8 to Indio, CA, then over CA Hwy 86 to El Centro. (3) Between Keene and Blythe, CA: From Keene over CA Hwy 58 to Barstow, CA, then over Interstate Hwy 40 to Needles, CA, then over CA Hwy 95 to Blythe. F. In performing the service herein authorized, carrier may make use of any of all streets, roads, highways, and bridges necessary or convenient for the performance of said service. G. Tacking Intended. Condition: Issuance of a certificate is subject to the coincidental cancellation, at applicant's written request, of the outstanding Certificate of Registration, in MC–48632 SUB 15f issued March 30, 1979. (Hearing site: San Francisco, CA.)

MC 52793 (Sub-55F), filed December 11, 1979. Applicant: BEKINS VAN LINES CO.—New Products Division, 3090 Via Mondo, Compton, CA 90221. Representative: David P. Christianson, 707 Wilshire Boulevard, suite 1800, Los Angeles, CA 90017. Transporting (1) *new furniture, new furnishings, and new appliances*, (2) *new store and office fixtures*, and (3) *new kitchen and institutional fixtures, and equipment*, and *accessories and parts* for commodities named above, between points in CA, on the one hand, and, on the other, points in the United States, (except AK and HI). (Hearing site: Los Angeles, CA.)

MC 52793 (Sub-56F), filed December 10, 1979. Applicant: BEKINS VAN LINES CO.—New Products Division, a corporation, 3090 Via Mondo, Compton, CA 90221. Representative: David P. Christianson, 707 Wilshire Boulevard, suite 1800, Los Angeles, CA 90017. Transporting furniture and furnishings, from the facilities of Libery Furniture at Liberty, NC, to points in CA, OR, WA, ID, NV, AZ, UT, MT, WY, CO, NM, IN, TX, IL, WI, MI, OH, KY, MA, RI, CT, NY, PA, NJ, MD, and VA. (Hearing site: Los Angeles, CA.)

MC 61592 (Sub-481F), filed December 17, 1979. Applicant: JENKINS TRUCK LINE, INC., P.O. Box 697, Jeffersonville, IN 47130. Representative: E.A. DeVine, P.O. Box 737, Moline, IL 61265. Transporting (1) *tractors* (except those with vehicle beds, bed frames, and fifth wheels), (2) *equipment* used in manufacture or distribution of tractors, (3) *agricultural industrial and construction machinery and equipment*, (4) *attachments* for the commodities in (2) and (3), and (5) *parts* for commodities described in (1) through (4) in mixed loads with commodities in (1) through (4) from Bettendor, IA to points in AL, AR, GA, LA, MS, TN, and TX. The sole purpose of this application is to substitute single line for joint-line operations. (Hearing site: Chicago, IL.)

MC 71452 (Sub-19F), filed December 3, 1979. Applicant: INDIANA TRANSIT SERVICE, INC., 4300 West Morris Street, Indianapolis, IN 46241. Representative: Warren A. Goff, 2008 Clark Tower, 5100 Poplar Avenue, Memphis, TN 38137. Transporting *personal care products, nutritional supplements and foods, and cleaning compounds*, between the facilities of the Shaklee Corporation or near Chicago, IL, on the one hand, and, on the other, points in Indiana. (Hearing site: Indianapolis, IN.)

MC 82063 (Sub-115F), filed December 7, 1979. Applicant: KLIPSCH HAULING CO., a corporation, 10795 Watson Road, Sunset Hills, MO 63127. Representative: E. Stephen Heisley, 666 11th Street, NW., Washington, DC 20001. Transporting *liquid petroleum oils and petrochemicals*, in bulk, in tank vehicles, from Natchez, MS, to points in AR, IL, IN, KS, LA, MO, OH, TN, and TX. (Hearing site: Chicago, IL or St. Louis, MO.)

MC 82063 (Sub-116F), filed December 7, 1979. Applicant: KLIPSCH HAULING CO., a corporation, 10795 Watson Road, Sunset Hills, MO 63127. Representative: E. Stephen Heisley, 666 11th Street, NW., Washington, DC 20001. Transporting *liquid cleaning, scouring, and washing compounds*, in bulk, in tank vehicles, from the facilities of The Procter & Gamble Mfg. Co., at Ivorydale, OH, to Chicago, IL and Fort Madison, IA. (Hearing site: Cincinnati, OH or St. Louis, MO.)

MC 87523 (Sub-108F), filed December 11, 1979. Applicant: STEWART TRUCKING CO., INC., P.O. Box 5155, Manchester, NH 03108. Representative: Edward J. Kiley, 1730 M Street, NW., Washington, D.C. 20036. Transporting *salt*, in bags, from Perth Amboy, NJ, to Bedford, NH. (Hearing site: Boston, MA or Washington, DC.)

MC 87523 (Sub-109F), filed December 11, 1979. Applicant: STEWART TRUCKING CO., INC., P.O. Box 5155, Manchester, NH 03108. Representative: Edward J. Kiley, 1730 M Street, NW., Washington, D.C. 20036. Transporting *paper, paper products, and empty containers*, between the facilities of Fonda/Royal Lace Group, Saxon Industries, Inc. at or near Bethel and St. Albans, VT, on the one hand, and, on the other, points in NY, ME, MA, NH, RI, CT, NJ, and PA. (Hearing site: Boston, MA or Washington, DC.)

MC 87523 (Sub-110F), filed December 11, 1979. Applicant: STEWART TRUCKING CO., INC., P.O. Box 5155, Manchester, NH 03108. Representative: Edward J. Kiley, 1730 M Street, NW., suite 501, Washington, DC 20036. Transporting: (1) *insulation, insulating materials*, and (2) *materials, equipment*, and *supplies* used in the manufacture, and distribution of insulation and insulating materials, between the facilities of Thermo-Chek Manufacturing Company, at or near Manchester, NH, on the one hand, and, on the other, points in ME, VT, MA, RI, CT, NY, and NJ. (Hearing site: Boston, MA, or Washington, DC.)

MC 92692 (Sub-8F), filed November 20, 1979. Applicant: FREEPORT FAST FREIGHT, INC., 4109 West 52nd Place, Chicago, IL 60632. Representative: Carl L. Steiner, 39 South LaSalle Street, Chicago, IL 60603. Over regular routes, transporting *general commodities* (except commodities in bulk, household goods as defined by the Commission, and commodities requiring special equipment) serving points in IA in the Davenport-Rock Island Commercial Zone, the Fulton, IL Commercial Zone, and the East Dubuque, IL Commercial Zone as off-route points in connection with carrier's regular route operations. (Hearing site: Chicago, IL.)

MC 96992 (Sub-22F), filed November 13, 1979. Applicant: HIGHWAY PIPELINE TRUCKING CO., a corporation, P.O. Box 1517, Edinburg, TX 78539. Representative: Kenneth R. Hoffman, 801 Vaughn Building, Austin, TX 78701. Transporting *paper, paper products, copying machines, and materials, equipment, supplies and accessories* used in the manufacture, service and distribution of copying machines (except commodities in bulk) between points in CA, NY, NH, and TX, restricted to the transportation of traffic originating at and destined to points in the described territory. (Hearing site: McAllen, TX.)

MC 103993 (Sub-1029F), filed December 27, 1979. Applicant: MORGAN DRIVE-AWAY, INC., 28651

U.S. 20 West, Elkhart, IN 46515. Representative: Paul D. Borghesani (same as applicant). Transporting (1) *prefabricated buildings,* and (2) *materials and supplies* used in the construction and installation of the commodities in (1) above, from the facilities of Traditional Log Homes, Inc., in Surry County, NC, to points in the U.S. in and east of ND, SD, NE, KS, OK and TX. (Hearing site: Charlotte, NC.)

MC 103993 (Sub-1030F), filed December 27, 1979. Applicant: MORGAN DRIVE-AWAY, INC., 28651 U.S. 20 West, Elkhart, IN 46515. Representative: Paul D. Borghesani (same as applicant). Transporting *machine rolls, iron and steel with rubber covers,* from the facilities of Stowe-Woodard Company at or near Ruston, LA, to points in TX, OK, AL, MS, and AR. (Hearing site: Shereveport, LA.)

MC 107012 (Sub-472F), filed December 10, 1979. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same as applicant). Transporting *Biological reactor media,* from the facilities of Norton Company, at or near Conneaut, OH, to points in the United States (except AK and HI). (Hearing sites: Cleveland, OH, or Washington, DC.)

Note.—Common contol may be involved.

MC 107012 (Sub-473F), filed December 10, 1979. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same as applicant). Transporting (1) *fixtures, furniture, food service equipment,* and (2) *parts and accessories* thereof, from the facilities of E. H. Thompson Co., at or near Jacksonville, FL, to points in AL, AR, AZ, GA, KY, LA, MS, NM, NC, OK, SC, TN, TX, VA and WV. (Hearing sites: Atlanta, GA, or Miami, FL.)

Note.—Common contol may be involved.

MC 107403 (Sub-1296F), filed December 7, 1979. Applicant: MATLACK, INC., Ten West Baltimore Avenue, Lansdowne, PA 19050. Representative: Martin C. Hynes, Jr. (same address as applicant). Transporting *liquid chemicals,* in bulk, in tank vehicles, from Huron, OH, to Elizabethton and Kingsport, TN, Grand Rapids and Kalamazoo, MI, and points in VA, NC, SC, FL, MT, UT, NM, and DC. (Hearing site: Washington, DC.)

MC 108053 (Sub-169F), filed December 10, 1979. Applicant: LITTLE AUDREY'S TRANSPORTATION CO., INC., P.O. Box 129, Fremont, NE 68025. Representative: Arnold L. Burke, 180 North LaSalle Street, Chicago, IL 60601. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between the facilities of Couzens Warehouse & Distributors, Inc., at or near Chicago, IL, on the one hand, and, on the other, points in AZ, CA, CO, ID, MT, NV, NM, OR, UT, WA, and WY, restricted to the transportation of traffic originating at or destined to the named facilities. (Hearing site: Chicago, IL.)

MC 110012 (Sub-66F), filed December 11, 1979. Applicant: ROY WIDENER MOTOR LINES, INC., 707 North Liberty Hill Road, Morristown, TN 37814. Representative: John R. Sims, Jr., 915 Pennsylvania Building, 425 13th Street NW., Washington, DC 20004. Transporting (1) *new furniture and furniture parts,* and (2) *materials and supplies* used in the manufacture of new furniture (except commodities in bulk in tank vehicles), between points in Rhea County, TN, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Washington, DC.)

MC 110012 (Sub-67F), filed December 11, 1979. Applicant: ROY WIDENER MOTOR LINES, INC., 707 North Liberty Hill Road, Morristown, TN 37814. Representative: John R. Sims, Jr., 915 Pennsylvania Building, 425 13th Street NW., Washington, DC 20004. Transporting (1) *new furniture and furniture parts,* from Galax, VA, to points in MN, WI, IA, NE, KS, OK, and MS; and (2) *materials and supplies* used in the manufacture of the commodities in (1) above (except commodities in bulk, in tank vehicles), in the reverse direction. (Hearing site: Washington, DC.)

MC 111812 (Sub-705F), filed December 5, 1979. Applicant: MIDWEST COAST TRANSPORT, INC., P.O. Box 1233, Sioux Falls, SD 57101. Representative: Lamoyne Brandsma (same address as applicant). Transporting *such commodities* as are dealt in by retail music store outlets and home entertainment stores, between points in the United States (except AK and HI). (Hearing site: Minneapolis, MN.)

MC 111812 (Sub-706F), filed December 27, 1979. Applicant: MIDWEST COAST TRANSPORT, INC., P.O. Box 1233, Sioux Falls, SD 57101. Representative: Lamoyne Brandsma (same address as applicant). Transporting *such commodities* as are dealt in by retail and wholesale automotive supply houses (except commodities in bulk), from the facilities of AMS, Oil at Superior, WI to points in AZ, CA, CO, ID, MT, NV, NM, OR, UT, WA and WY. (Hearing site: Minneapolis, MN.)

MC 111812 (Sub-707F), filed December 27, 1979. Applicant: MIDWEST COAST TRANSPORT, INC., P.O. Box 1233, Sioux Falls, SD 57101. Representative: R. H. Jinks (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment), from Seattle, WA to points in CO, IL, IA, KS, MN, MO, MT, NE, ND, SD, UT and WI, restricted to the transportation of traffic having a prior movement by water or to that which moves from the facilities of International Freight Forwarders in Seattle, WA. (Hearing site: Seattle, WA.)

MC 112713 (Sub-296F), filed December 27, 1979. Applicant: YELLOW FREIGHT SYSTEM, INC., P.O. Box 7270, Overland Park, KS 66207. Representative: Robert E. DeLand (same address as applicant). Over regular routes, transporting *general commodities* (except household goods as described by the Commission, classes A and B explosives, commodities in bulk, those requiring special equipment and those of unusual value) serving El Dorado Springs, MO as an off-route point in connection with carrier's authorized operations. Common control may be involved. (Hearing site: Kansas City or St. Louis, MO.)

MC 112713 (Sub-297F), filed December 27, 1979. Applicant: YELLOW FREIGHT SYSTEM, INC., P.O. Box 7270, Overland Park, KS 66207. Representative: Robert E. DeLand (same address as applicant). Over regular routes, transporting *general commodities* (except classes A and B explosives, commodities in bulk, those requiring special equipment, commodities of unusual value and household goods as defined by the Commission), serving Aurora, MO as an off-route point in connection with carriers authorized operations. (Hearing site: Kansas City, MO; Chicago, IL.)

Note.—The person or persons who appear to be engaged in common control must either file an application under 49 U.S.C. 11343(a) or submit an affidavit indicating why such approval is unnecessary.

MC 112822 (Sub-477F), filed December 11, 1979. Applicant: BRAY LINES INC., P.O. Box 1191, 1401 North Little Street, Cushing, OK 74023. Representative: Dudley G. Sherrill (same address as applicant). Transporting (1) *wheels, brakes, and axle assemblies,* and (2) *parts,* for the commodities in (1) above; from (a) Chattanooga, TN, Jackson,

Dearborn, Detroit, and Romulus, MI, Chicago, IL, Warwick, RI, Dayton and Tiffon, OH, Elkhart, Logansport, and Auburn, IN, Montezuma, GA, and Waupaca, WI, to Seminole, OK, and (b) from Seminole, OK, to Chino, CA, Montezuma, GA, Elkhart, IN, and McMinnville, OR, restricted in (a) and (b) above to the transportation of traffic originating at or destined to the facilities used by Kelsey-Hayes Company. (Hearing site: Tulsa or Oklahoma City, OK.)

MC 115162 (Sub-515F), filed December 7, 1979. Applicant: POOLE TRUCK LINE, INC., P.O. Box Drawer 500, Evergreen, AL 36401. Representative: Robert E. Tate (same address as applicant). Transporting (1) *alcohol anti-freeze, anti-freeze and deicing proprietory compounds, winshield washer solvent* (except in bulk, in tank vehicles), *containers and enclosures* from points in Montgomery County, AL, to points in the US in and east of ND, SD, NE, KS, OK, and TX, and (2) *materials, supplies and equipment* used in the manufacture and distribution of the commodities in (1) (except in bulk, in tank vehicles), from points in the US in and east of ND, SD, NE, KS, OK, and TX to points in Montgomery County, AL. (Hearing site: Montgomery or Birmingham, AL.)

MC 116362 (Sub-6F), filed December 11, 1979. Applicant: AIME BELLAVANCE & SONS, INC., Boynton Street, Barre, VT 05641. Representative: John P. Monte, 61 Summer Street, Barre, VT 05641. Transporting (1) *stone and granite,* (except monumental stone and granite), and, *materials and machinery,* used in the manufacturing of stone and granite, between (a) Barre and Bethel, VT, and Concord, NH, on the one hand, and, on the other, those points in the United States in and east of ND, SD, NE, CO, OK, and TX, and, (2) *stone, granite, and materials and machinery* used in the manufacturing of stone and granite, from Barre, and Montpellier, VT to points in MD, DE, WV, VA, and DC. (Hearing site: Montpellier, VT or Boston, MA.)

MC 116763 (Sub-637F), filed November 16, 1979. Applicant: CARL SUBLER TRUCKING, INC., North West Street, Versailles, OH 45380. Representative: Gary J. Jira (same address as applicant). Transporting *such commodities* as are used or dealt in by manufacturers and distributors of lighting fixtures (except commodities in bulk, in tank vehicles), between Bristol, PA on the one hand, and, on the other, points in the US in and east of MN, IA, MO, TN, GA, and FL, restricted to the transportation of traffic originating at or destined to the facilities of Keystone Lighting Corporation. (Hearing site: Philadelphia, PA.)

MC 116763 (Sub-638F), filed November 16, 1979. Applicant: CARL SUBLER TRUCKING, INC., North West Street, Versailles, OH 45380. Representative: Gary J. Jira (same address as applicant). Transporting *security hardware, aluminum and steel security windows, jail and prison equipment and iron* and *steel fabrications* (except commodities in bulk, in tank vehicles), from San Antonio, TX to points in the US in and east of MN, IA, MO, AR and LA, restricted to the transportation of traffic originating at the facilities of Southern Steel Company and destined to the indicated destinations. (Hearing site: San Antonio, TX.)

MC 116763 (Sub-639F), filed November 16, 1979. Applicant: CARL SUBLER TRUCKING, INC., North West Street, Versailles, OH 45380. Representative: Gary J. Jira (same address as applicant). Transporting *pet foods* (except commodities in bulk, in tank vehicles) from El Paso, TX, to points in the US in and east of MN, IA, MO, OK and TX, restricted to the transportation of traffic originating at the named origin and destined to the indicated destinations. (Hearing site: Los Angeles, CA.)

MC 118202 (Sub-147F), filed December 31, 1979. Applicant: SCHULTZ TRANSIT, INC., P.O. Box 406, Winona, MN 55987. Representative: Eugene A. Schultz, (same as applicant). Transporting *such merchandise* as is dealt in by wholesale and retail gift stores between Addison, TX, on the one hand, and, on the other, points in the United States in and east of ND, SD, NE, CO, OK, and TX, restricted to the transportation of traffic originating at or destined to the facilities used by Tuesday Morning, Inc. (Hearing site: Dallas, TX.)

MC 119642 (Sub-10F), filed December 13, 1979. Applicant: JANESVILLE AUTO TRANSPORT CO., a corporation, 1800 South Jackson, P.O. Box 959, Janesville, WI 53545. Representative: Eugene C. Edward, 100 West Long Lake Road, Suite 102, Bloomfield Hills, MI 48013. *Contract carrier* transporting *motor vehicles,* in initial movements, from the facilities of General Motors Corporation at Wilmington, DE, to points in IL, IN, IA, KY, MI, MN, MO, OH, and WI, under continuing contract(s) with General Motors Corporation, of Warren, MI. (Hearing site: Detroit, MI.)

Note.—Dual operations may be involved.

MC 123263 (Sub-18F), filed December 10, 1979. Applicant: FLOYD R. WANGERIN AND LORRAINE C. WANGERIN, a partnership, d.b.a. WANGERIN TRUCKING CO., Rural Route 2, Stephenson, MI 49887. Representative: Michael S. Varda, 121 South Pinckney Street, Madison, WI 53703. Transporting *hydraulic hose and fittings,* (1) from Iola, KS to Milwaukee, WI and Menominee, MI, and (2) from Milwaukee, WI to Menominee, MI, restricted in (1) to the transportation of traffic destined to the facilities of Menominee Rubber Company and in (2) to the transportation of traffic origniating at and destined to facilities of the named shipper. (Hearing site: Chicago, IL, or Milwaukee, WI.)

MC 124393 (Sub-201F), filed December 13, 1979. Applicant: FRANK POTTER TRUCKING CO., INC., P.O. Box 132, Boonville, MO 65233. Representative: Tom B. Kretsinger, 20 East Frankline, Liberty, MO 64068. *Contract carrier* transporting (1) *fiberboard,* from Boonville, MO to points in AL, AZ, FL, GA, ND, NM, PA, VA, WV, and WY, and (2) *wax* in shipper's tank vehicles, or in drums, from Hattiesburg, MS to Boonville, MO, under continuing contract(s) with Huebert Fiberboard, Inc., of Boonville, MO. (Hearing site: Jefferson City, or Kansas City, MO.)

MC 125952 (Sub-46F), filed December 3, 1979. Applicant: INTERSTATE DISTRIBUTOR CO., a corporation, 8311 Durango Street, SW, Tacoma, WA 98499. Representative: George R. LaBissoniere, 1100 Norton Building, Seattle, WA 98104. *Contract carrier* transporting *salt and salt products* (except in bulk), from Saltair, UT, to points in MT, CO, and ID, under continuing contract(s) with Morton Salt, Division of Morton Norwich Products, of Chicago, IL. (Hearing site: Seattle, WA.)

Note.—Dual operations may be involved.

MC 126063 (Sub-13F), filed November 20, 1979. Applicant: BIRD TRUCKING, INC., 1370 Swaner Road, Salt Lake City, UT 84104. Representative: Bruce W. Shand, 430 Judge Building, Salt Lake City, UT 84111. *Contracting carrier,* transporting, (1) *stone, marble, pre-cast mosiac, concrete panels, and trim, pre-mosaic mix, and cast stone products,* and (2) *materials and supplies* used in the installation and manufacture of the commodities in (1) between points in AZ, MT, CA, CO, ID, UT, and WY under continuing contract(s) with State Stone Corporation, Inc., of Murray, UT. (Hearing site: Salt Lake City, UT.)

MC 128412 (Sub-7F), filed December 3, 1979. Applicant: LO-TEMP EXPRESS, INC., Burns Avenue, Canan Station, Altoona, PA 16603. Representative: Arthur J. Diskin, 806 Frick Bldg., Pittsburgh, PA 15219. *Contract carrier,* transporting (1) *electrical fixtures,* from the facilities of Lumax Industries, Inc. at

Altoona, PA, to points in WV, VA, KY, TN, SC, NC, GA, and AR, and (2) *materials* used in the manufacture of electrical fixtures in the reverse direction, under continuing contract(s) with Lumax Industries, Inc., of Altoona, PA. (Hearing site: Pittsburgh, PA, or Washington, DC.)

MC 128543 (Sub-21F), filed December 10, 1979. Applicant: CRESCO LINES, INC., 13900 S. Keeler Ave., Crestwood, IL 60445. Representative: Donald B. Levine, 39 S. LaSalle St., Chicago, IL 60603. *Contract carrier* transporting *zinc, zinc alloys, and zinc products,* from the facilities used by Jersey Miniere Zinc Company at or near Clarksville, TN, to points CT, DE, ME, MA, NH, NJ, NY, RI, and VT, under continuing contract(s) with Jersey Miniere Zinc Company, of Nashville, TN. (Hearing site: Chicago, IL.)

MC 129712 (Sub-24F), filed December 6, 1979. Applicant: GEORGE BENNETT MOTOR EXPRESS, INC., P.O. Box 569, McDonough, GA 30253. Representative: Frank D. Hall, Suite 713, 3384 Peachtree Rd., N.E., Atlanta, GA 30326. *Contract carrier* transporting *agricultural machinery, and parts and accessories thereto,* from Pella, IA, to points in AL, AR, FL, GA, LA, MS, NC, SC, TN, and VA, under continuing contract(s) with Massey Ferguson, Inc., of Des Moines, IA. (Hearing site: Atlanta, GA.)

MC 129712 (Sub-25F), filed December 7, 1979. Applicant: GEORGE BENNETT MOTOR EXPRESS, Inc., P.O. Box 569, McDonough, GA 30253. Representative: Frank D. Hall, Suite 713, 3384 Peachtree Rd., N.E., Atlanta, GA 30326. *Contract carrier* transporting *tractors* (except truck tractors), from the facilities of Massey Ferguson, Inc., at or near Detroit, MI, to points NC and SC, under continuing contract(s) with Massey Ferguson, Inc., of Des Moines, IA. (Hearing site: Atlanta, GA.)

MC 129712 (Sub-26F), filed December 7, 1979. Applicant: GEORGE BENNETT MOTOR EXPRESS, INC., P.O. Box 569, McDonough, GA 30253. Representative: Frank D. Hall, Suite 713, 3384 Peachtree Rd., N.E., Atlanta, GA 30326. *Contract carrier* transporting *Such commodities as are dealt in or used by agricultural equipment dealers and manufacturers* (except commodities in bulk), from the facilities of Avco New Idea Farm Equipment Division, The Paul Revere Corporation, at Coldwater, OH, to points in AL, AR, FL, GA, LA, MS, NC, SC, TN, and VA, under continuing contract(s) with Ford Motor Company, of Troy, MI. (Hearing site: Atlanta, GA.)

MC 135762 (Sub-9F), filed December 10, 1979. Applicant: JOHN H. NEAL, INC., P.O. Box 3877, 6004 Highway 271 South, Fort Smith, AR 72913. Representative: John H. Neal (same address as applicant). Contract carrier transporting, *fencing, fencing materials, and wire products,* from the facilities of Bekaert Steel Wire Corporation, at or near Van Buren, AR, to points in AL, DE, FL, GA, LA, MD, MS, NC, OK, SC, TN, TX and VA, under continuing contract(s) with Bekaert Steel Wire Corporation, of Van Buren, AR. (Hearing site: Washington, DC.)

MC 136342 (Sub-19F), filed November 16, 1979. Applicant: JACKSON & JOHNSON, INC., West Church Street, P.O. Box 327, Savannah, NY 13146. Representative: S. Michael Richards, 44 North Ave., P.O. Box 225, Webster, NY 14580. *Contract carrier,* transporting: *cranberries and cranberry products, grapefruit, grapefruit juice, prunes and prune products,* in containers, between North East, PA, on the one hand, and, on the other, points in MA, NY, OH and Bordentown, NJ, and between the facilities of Ocean Spray Cranberries, Inc. in Massachusetts, on the one hand, and, on the other, Bordentown, NJ under continuing contract(s) with Ocean Spray Cranberries, Inc., of Middleborough, MA. (Hearing site: Boston, MA, or New York, NY.)

MC 138493 (Sub-6F), filed December 10, 1979. Applicant: JAKUM TRUCKING, INC., Rural Route 2, Miley Road, Sheboygan Falls, WI 53085. Representative: Wayne W. Wilson, 150 East Gilman Street, Madison, WI 53703. *Contract carrier* transporting *foodstuffs* from Plymouth, WI, to points in AZ, CA, CO, and TX, under continuing contract(s) with Sargento Cheese Co., Inc., of Plymouth, WI. (Hearing site: Madison or Milwaukee, WI.)

MC 140902 (Sub-14F), filed November 13, 1979. Applicant: DPD, INC., 3600 N.W. 82nd Avenue, Miami, FL 33152. Representative: Warren A. Goff, Esq., 2008 Clark Tower, 5100 Poplar Avenue, Memphis, TN 38137. *Contract carrier,* transporting *prefabricated buildings and component parts* and *materials, equipment and supplies* used in the construction of prefabricated buildings, between the facilities of National Homes Corporation at or near Lafayette, IN, on the one hand, and, on the other, points in AL, AZ, AR, CA, CO, CT, DE, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT, VT, VA, WV, WI, and WY, under continuing contract(s) with National Homes Corporation, of Lafayette, IN. (Hearing sites: Miami, FL or Washington, DC.)

MC 142062 (Sub-35F), filed November 20, 1979. Applicant: VICTORY FREIGHTWAY SYSTEM, INC., P.O. Box P, Sellersburg, IN 47172. Representative: William P. Jackson, Jr., 3426 N. Washington Boulevard, P.O. Box 1240, Arlington, VA 22210. *Contract carrier* transporting *such commodities* as are dealt in or used by a furniture manufacturer (except in bulk), from facilities of or used by Bal Harbour Manufacturing, Inc., at or near Santa Ana, CA, and Denver, CO, to points in the US (except CA, AK and HI), under continuing contract(s) with Bal Harbour Manufacturing, Inc., of Santa Ana, CA. (Hearing site: Los Angeles, CA.)

MC 142543 (Sub-5F), filed December 11, 1979. Applicant: L. D. FONTAINE, d.b.a. FONTAINE TRUCKING, 504 Riverview Blvd., Great Falls, MT, 59404. Representative: (same as above). Transporting *linseed meal,* in bags, from ports of entry on the International Boundary line between the United States and Canada in MT to points in CA, restricted to the transportation of traffic moving in foreign commerce only. (Hearing site: Great Falls or Billings, MT.)

MC 145202 (Sub-4F), filed November 1, 1979. Applicant: K-LINES, LTD., 3125 South 11th Street, Council Bluffs, IA 50551. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. *Contract carrier* transporting (1) *meats, meat products, and meat byproducts, and articles distributed by meat-packing houses,* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates, 61 M.C.C. 766* (except hides, commodities in bulk, and those requiring the use of special equipment) (a) from the facilities of Farmland Foods, Inc., at (i) Denison, Iowa Falls, Carroll, Fort Dodge, Cherokee, and Des Moines, IA, and (ii) Crete, Lincoln and Omaha, NE, to points in AL, FL, GA, LA, MS, NC, SC, and TN, and (b) from the facilities of Prime Meat Processors, Inc., at Omaha, NE, to points in AR, AL, FL, GA, LA, MO, MS, NC, SC, and TN; and (2) *materials, equipment and supplies* utilized in (1) above, (a) from points in the states indicated in (1)(a) to the facilities of Farmland Foods, Inc., at or near (i) Denison, Iowa Falls, and Carroll, IA, and (ii) Crete, NE, and (b) from points in the states indicated in (1)(b) to the facilities of Prime Meat Processors, Inc., at Omaha, NE, under continuing contract(s) with Farmland Foods, Inc., of Denison, IA, and Prime Meat Processors, Inc., of Omaha, NE. (Hearing site: Omaha, NE.)

MC 145743 (Sub-13F), filed December 11, 1979. Applicant: T.F.S., INC., RR 2, Box 126, Grand Island, NE 68801. Representative: A. J. Swanson, P.O. Box

1103, 300 S. Thompson Ave., Sioux Falls, SD 57101. Transporting *meats, meat products, meat byproducts and articles distributed by meat-packinghouses,* as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766, from points in Osborne County, KS, to points in CA, MO, and NE. (Hearing site: Omaha, NE, or Downs, KS.)

MC 145772 (Sub-11F), filed June 25, 1979, and published in the FR issue of January 15, 1979 as MC 145772 Sub 6F and republished as corrected this issue. Applicant: LANG CARTAGE CORP., 1308 South West Avenue, Waukesha, WI 53187. Representative: John L. Bruemmer, 121 West Doty Street Street, Madison, WI 53703. The purpose of this republication is to correctly identify this application by its correct MC Docket number which is MC 145772 Sub 11F in lieu of MC 145772 Sub 6F published in error. The request of authority remains the same as previously published.

MC 146343 (Sub-5F), filed November 15, 1979. Applicant: SOUTHERN EXPRESS CORPORATION, 308 South Ocean Blvd., Pompano, FL 33062. Representative: Mr. Daniel Sumner, 131 Airport Rd., Warwick, RI 02889. Contract carrier transporting (1) *plastic pellets, garden hose, rubber tire treads, shoe soling, plastic tubing, rubber blocks, rubber mats, dry and wet paints* (non-hazardous), *plasticizers,* (except in bulk), and (2) *chemicals and supplies* used in the manufacture of the commodities in (1) (except in bulk), between Pawtucket, RI, and Attleboro, MA, on the one hand, and, on the other, points in the United States (except AK and HI), under continuing contract(s) with Teknor Apex Company of Pawtucket, RI. (Hearing site: Washington, DC or FL.)

MC 146343 (Sub-6F), filed November 14, 1979. Applicant: SOUTHERN EXPRESS CORPORATION, 308 S. Ocean Blvd., Pompano, FL 33062. Representative: Mr. Daniel Sumner 131 Airport Rd., Warwick, RI 02889. *Contract carrier,* transporting *printing paper,* not printed, between Boston, MA and points in AR, FL, GA, IL, IN, KS, KY, MO, MN, MD, ME, NJ, NY, NC, ND, OH, OK, PA, SC, SD, TN, VA and WV, under continuing contract(s) with THE BOSTON PAPER BOARD COMPANY, of Boston, MA. (Hearing site: Washington, DC or FL.)

MC 146643 (Sub-25F), filed November 7, 1979. Applicant: DAVID CREECH TRANSPORTATION SYSTEMS, INCORPORATED, 655 E. 114th Street, Chicago, IL 60628. Representative: Donald B. Levine, 39 S. LaSalle Street, Chicago, IL 60603. Contract carrier, transporting *insulating materials and commodities used in the installation of* insulating materials from Alexandria, IN and Cameron, MO to points in IL, IN, IA, the Lower Peninsula of MI, MN, MO, OH and WI, under continuing contract(s) with Rockwood Industries, Inc., of Denver, CO. (Hearing site: Chicago, IL.)

MC 147252 (Sub-3F), filed December 12, 1979. Applicant: FCT CORP., Dalton Pike, Box 20A, Route #1, Cleveland, TN 37311. Representative: Edwin M. Snyder, 22375 Haggerty Road, P.O. Box 400, Northville, MI 48167. Contract carrier, transporting *floor covering and materials* used in the installation of floor covering between the facilities of New York Carpet World, Inc. at or near Southfield and Detroit, MI, on the one hand, and, on the other, points in the United States (except AK and HI), under continuing contract(s) with New York Carpet World, Inc., of Southfield, MI. (Hearing site: Detroit, MI or Chicago, IL.)

MC 147652 (Sub-2F), filed November 19, 1979. Applicant: J & V TRUCKING COMPANY, INC., 948 Alton Parkway, Alton Industrial Park, Birmingham, AL 35210. Representative: Gerald D. Colvin, Jr., 603 Frank Nelson Building, Birmingham, AL 35203. Contract carrier, transporting (1) *fabricated steel pipe and materials and supplies* used in the manufacture, installation or sale of such commodities, between the facilities of Emergency Fire Protection, Inc. of AL, at or near Birmingham, AL, on the one hand, and, on the other, points in AL, GA, FL, SC, NC, VA, KY, TN, AR, MO, MS, LA, TX, NM, AZ and CA, under continuing contract(s) with Emergency Fire Protection, Inc.; and (2) *iron and steel and iron and steel articles* (a) from New Orleans, LA and Mobile, AL to the facilities of Toyoda America, Inc. at or near Birmingham, AL and (b) from the facilities of Toyoda America, Inc. at or near Birmingham, AL to Youngstown, OH and Chicago, IL, under continuing contract(s) with Toyoda America, Inc. (Hearing site: Birmingham, AL or Atlanta, GA.)

MC 147662 (Sub-4F), filed November 13, 1979. Applicant: KMC TRANSPORT, INC., P.O. Box 962, Caldwell, ID 83605. Representative: J. Max Harding, P.O. Box 82028, Lincoln, NE 68501. *Contract carrier* transporting *wrecked, disabled or repossessed motor vehicles, and boats,* between points in CA, CO, ID, KS, MT, NV, NM, OR, TX, UT, WA and WY, on the one hand, and, on the other, points in Canyon and Ada Counties, ID, under continuing contract(s) with Idaho Salvage Pool, of Caldwell, ID. (Hearing site: Salt Lake City, UT.)

MC 147732F, filed July 3, 1979. Applicant: JEROME GEHRING, d.b.a. JEROME GEHRING TRUCKING, 12165 Kaufman Road N.E., Silverton, OR 97381. Representative: Earle V. White, 2400 S.W. Fourth Avenue, Portland, OR 97201. Transporting (1) *feed and feed ingredients,* and *fertilizer,* dry, in bulk, and (2) *commodities* the transportation of which is otherwise exempt from economic regulation under 49 U.S.C. 10526(a)(6) (formerly Section 203(b)(6)), of the Interstate Commerce Act), in mixed loads with the commodities in (1) above, dry, in bulk, from points in CA to points in OR. (Hearing site: Portland, OR.)

MC 147942 (Sub-2F), filed August 14, 1979. Applicant: M & L TRUCK LINE, INC., P.O. Box 358, Memphis, TN 38103. Representative: John Paul Jones, P.O. Box 3140, Front St. Station, 180 Jefferson Avenue, Memphis, TN 38103. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), from those points in the United States in and east of ND, SD, NE, KS, NM, and TX, to points in AR, MS, and TN. (Hearing site: Memphis, TN, or St. Louis, MO.)

Note.—Applicant has introduced the issue of rates in support of its application.

MC 148283F, filed September 19, 1979. Applicant: ABC TRANSPORTATION, INC., State Docks Road, Eufaula, AL 36027. Representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 Eleventh Street, NW., Washington, DC 20001. *Contract carrier* transporting (1) *pre-fabricated metal buildings, knocked down, and prefabricated metal grain storage bins, knocked down,* (2) *parts and accessories* for the commodities in (1) above, and (3) *materials, equipment and supplies* (except in bulk) used in the manufacture, sale, and assembly of the commodities in (1) above, between the facilities of American Buildings Company, Inc., and Conrad-American, Inc., in Barbour County, AL, on the one hand, and, on the other, points in the United States (except AK and HI), under continuing contract(s) with American Buildings Company, Inc. and Conrad-American, Inc., both of Eufaula, AL. (Hearing site: Birmingham, AL.)

MC 148642F, filed November 5, 1979. Applicant: DON WILLIAMS d.b.a. D. A. WILLIAMS FEED TRANSIT, Morgan, MN 56266. Representative: Wm. T. O'Connor, 519 Center Street, New Ulm, MN 56073. *Contract carrier* transporting *feed and feed ingredients* between the facilities of Farmland Industries, Inc., at

Mankato, MN, on the one hand, and, on the other, points in WI and SD, under continuing contract(s) with Farmland Industries, Inc., of Mankato, MN. (Hearing site: Minneapolis, or St. Paul, MN.)

MC 148652F, filed November 13, 1979. Applicant: JOHNSON & HAMITER TRUCKING CO., INC., 4480 Ayrshire Street, Indianapolis, IN 46208. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. *Contract carrier* transporting (1) *batteries*, and (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities in (1) above, between the facilities of Delco Remy Division of General Motors Corp., at (a) Muncie, IN, (b) Olathe, KS, (c) Fitzgerald, GA, (d) Anaheim, CA, and (e) New Brunswick, NJ, on the one hand, and, on the other, points in the United States (except AK and HI), under continuing contract(s) with Delco Remy Division of General Motors Corporation of Anderson, IN. (Hearing site: Indianapolis, IN.)

MC 149373F, filed August 1, 1979. Applicant: LARAMIE TIRE DISTRIBUTORS, INC., 700 Markly Street, P.O. Box 28, Norristown, PA 19404. Representative: Thomas N. Willess, 1000 Sixteenth Street, NW, Washington, DC 20036. *Contract carrier* transporting *tires, tubes, flaps and rubber products* (except commodities in bulk) between Conshohocken, Frazer, Montgomeryville, Norristown and Royersford, PA, on the one hand, and, on the other, points in FL, GA, SC, and NC, under continuing contract(s) with Lee Tire & Rubber Company of Conshohocken, PA. (Hearing site: Philadelphia, PA, or Washington, DC.)

Freight Forwarder

FF 402 (Sub-1F), filed December 12, 1979. Applicant: SWIFT INTERNATIONAL, INC., 7901 Fourth Street North, St. Petersburg, FL 33734. Representative: Alan F. Wohlstetter, 1700 K Street, N.W., Washington, DC 20006. Freight forwarder transporting *used household goods* and *unaccompanied baggage*, between points in the United States (including AK and HI, but excluding ND and SD). Condition: Issuance of this Permit is subject to prior or coincidental cancellation at applicant's written request of Permit No. FF–402, issued June 23, 1976. (Hearing site: St. Petersburg, FL.)

FF 523 filed November 13, 1979. Applicant: HENRY ORTIZ, 205 Moorewood Avenue, Avon Lake, OH 44012. Representative: Charles B. Zellmer, 1400 Leader Bldg., Cleveland, OH 44114. Freight forwarder transporting *general commodities*, (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), restricted to prior or subsequent movement by water, from points in IN, KY, MI, OH and WV to Baltimore, MD; Philadelphia, PA; Hampton Roads, VA; Newport News, Norfolk and Portsmouth, VA, and NJ (within the New York, NY commercial zone), and NY (within the New York, NY commercial zone), and from points in IN, KY, OH, PA and WV to Detroit, MI, and from Baltimore, MD; Philadelphia, PA; Hampton Roads, Newport News, Norfolk and Portsmouth, VA; and points in NJ (within the New York, NY commercial zone), and NY (within the New York, NY commercial zone) to points in IN, KY, MI, OH, and WV and from Detroit, MI, to points in IN, KY, OH, PA and WV. (Hearing site: Cleveland, OH or Washington, DC.)

FF 513 (Sub-1), filed December 7, 1979. Applicant: MURPHY WAREHOUSE COMPANY, 701 24th Avenue SE., Minneapolis, MN 55414. Representative: Andrew R. Clark, 1000 First National Bank Building, Minneapolis, MN 55402. Transporting *general commodities* (except commodities in bulk and household goods) from the facilities of Murphy Warehouse Company at Minneapolis, MN to Grand Forks, Fargo and Whapeton, ND; Eau Claire, LaCrosse, Superior, Altoona, Chippewa Falls and Menomonie, WI and Sioux Falls, Brookings, and Watertown SD, restricted to the transportation traffic originating at the facilities of Murphy Warehouse Company. (Hearing site: Minneapolis, MN.)

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Decided: March 10, 1980.

By the Commission, Review Board Number 3, Members Parker, Fortier and Hill.

MC 200 (Sub-435F), filed December 26, 1979. Applicant: RISS INTERNATIONAL CORPORATION, 903 Grand Ave., Kansas City, MO 64106. Representative: H. Lynn Davis (same address as applicant). Transporting *mineral wool, insulation and insulation materials and supplies*, serving Alexandria, IN as an off-route point in connection with applicant's regular route authority. (Hearing site: Kansas City, MO.)

MC 720 (Sub-79F), filed Feburary 4, 1980. Applicant: BIRD TRUCKING COMPANY, INC., P.O. Box 227, Waupun, WI 53963. Representative: Tom Westerman (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment), between Tupelo, Verona, and Okolona, MS, on the one hand, and, on the other, points in IL, IN, MI, MN, MO, OH, and WI, restricted to the transportation of traffic originating at and destined to the facilities of Arvin Industries, Inc. (Hearing site: Milwaukee or Madison, WI.)

MC 730 (Sub-496F), filed Feburary 4, 1980. Applicant: PACIFIC INTERMOUNTAIN EXPRESS CO., 25 N. Via Monte, P.O. Box 8004, Walnut Creek, CA 94596. Representative: R. N. Cooledge (same address as applicant). Transporting *liquid chemicals*, in bulk, in tank vehicles, from St. Joseph, MO to points in the United States (except AK and HI). (Hearing site: San Francisco, CA or St. Louis, MO.)

MC 5470 (Sub-217F), filed Feburary 1, 1980. Applicant: TAJON, INC., R.D. 5, Mercer, PA 16137. Representative: Brian L. Troiano, 918, 16th Street, N.W., Washington, DC 20006. Transporting (1)(a) *iron and steel articles* and (b) *such commodities* as are transported in dump vehicles, from the facilities of Raritan River Steel Company at or near Perth Amboy, NJ to those points in the United States in and east of MT, WY, CO and NM; (2) *materials and supplies* used in the manufacture of iron and steel articles, in the reverse direction. (Hearing site: Washington, DC or Newark, NJ.)

MC 5470 (Sub-220F), filed January 25, 1980. Applicant: TAJON, INC., R. D. 5. Mercer, PA 16137. Representative: Brian L. Troiano, 918 16th Street, N.W., Washington, D.C. 20006. Transporting (1) *materials and supplies* used in the manufacture of carbon products, in dump vehicles, from those points in the United States in and east of ND, SD, NE, KS, OK, and TX, to the facilities of Union Carbide Corporation, Carbon Products Division, at or near Clarksburg, WV; Fostoria, OH; Clarksville and Natco, TN; Niagara Falls, NY; and Robinson, IL, and (2) *carbon products*, in dump vehicles, between the facilities of Union Carbide Corporation, Carbon Products Division, at or near Clarksburg, WV; Fostoria, OH; Clarksville and Natco, TN; Niagara Falls, NY; and Robinson, IL. (Hearing site: Washington, DC, or New York, NY.)

MC 5470 (Sub-221F), filed January 25, 1980. Applicant: TAJON, INC., R. D. 5. Mercer, PA 16137. Representative: Brian L. Troiano, 918 16th Street, N.W., Washington, D.C. 20006. Transporting (1) *alloys and ores*, in dump vehicles, from Ashtabula, OH, to those points in the

United States in and east of ND, SD, NE, KS, OK, and TX, and (2) *materials and supplies* used in the manufacture of the commodities in (1), in dump vehicles, in the reverse direction. (Hearing site: New York, NY or Washington, DC.)

MC 5470 (Sub-222F), filed January 25, 1980. Applicant: TAJON, INC., R. D. 5. Mercer, PA 16137. Representative: Brian L. Troiano, 918 16th Street, N.W., Washington, D.C. 20006. Transporting (1) *alloys and ores,* in dump vehicles, from East Liverpool and Marietta, OH, and Alloy, WV, to those points in the United States in and east of ND, SD, NE, KS, OK, and TX, and (2) *materials and supplies* used in the manufacture of the commodities in (1) in dump vehicles, in the reverse direction. (Hearing site: Washington, DC or New York, NY.)

MC 28990 (Sub-9F), filed February 5, 1980. Applicant: SEYMOUR TRANSFER LINES, INC., 800 East Factory St., Seymour, WI 54165. Representative: Wayne W. Wilson, 150 East Gilman St., Madison, WI 53703. Transporting over regular routes, *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in WI as follows: (1) between Oconto, WI, and Waupaca County Hwy I, over WI Hwy 22, (2) between Shawano and Green Bay, WI, over WI Hwy 29, (3) between Suring and Green Bay, WI, over WI Hwy 32, (4) between Oconto and Fond Du Lac, WI, over U.S. Hwy 41, (5) between Shawano, WI, and junction WI Hwy 47 and Shawano County Hwy H, over WI Hwy 47, (6) between junction WI Hwy 47 and Shawano County Hwy H and junction WI Hwy 22 and Shawano County Hwy H, over Shawano County Hwy H, (7) between Shawano County Hwy H and Oconto County Hwy VV, from junction Shawano County Hwy H and Shawano County Hwy HH, over Shawano County Hwy HH to the Shawano-Oconto County Line, then over Oconto County Hwy HH to junction Oconto County Hwy VV, and return over the same route, (8) between junction Oconto County Hwy HH and Oconto County Hwy VV and junction Oconto County Hwy VV and WI Hwy 22, over Oconto County Hwy VV, (9) between WI Hwy 22 and Oconto County Hwy VV, from junction WI Hwy 22 and Shawano County Hwy V, over Shawano County Hwy V to Shawano-Oconto County line, then over Oconto County Hwy V to junction Oconto County Hwy VV, and return over the same route, (10) between WI Hwy 29 and U.S. Hwy 141, from junction WI Hwy 29 and Shawano County Hwy E, over Shawano County Hwy E to Shawano-Oconto County line, then over Oconto County Hwy E to U.S. Hwy 141, and return over the same route, (11) between Stiles Junction and Green Bay, WI, over U.S. Hwy 141, (12) between WI Hwy 22 and Oneida, WI, from junction WI Hwy 22 and Oconto County Hwy J, over Oconto County Hwy J to Brown-Oconto County line, then over Brown County Hwy J to Oneida, WI, and return over the same route, (13) between WI Hwy 22 and WI Hwy 187, over WI Hwy 156, (14) between junction WI Hwy 156 and WI Hwy 187 and WI Hwy 22, over WI Hwy 187, (15) between WI Hwy 187 and WI Hwy 29, over Shawano County Hwy T, (16) between Seymour and Pulcifer, WI, from Seymour, WI over Outagamie County Hwy C to the Outagamie-Shawano County line, then over Shawano County Hwy C to Pulcifer, and return over the same route, (17) between Angelica and Pulaski, WI, over Hwy 160, (18) between WI and 32 and Suamico, WI, over Brown County Hwy B, (19) between WI Hwy 32 and U.S. Hwy 141, over Oconto County Hwy S, (20) between Oconto Falls and Howard, WI, from Oconto Falls, WI over Oconto County Hwy C to Oconto-Brown County line, then over Brown County Hwy C to Howard, WI, and return over the same route, (21) between Oconto Falls and Oconto, WI, over Oconto County Hwy SP, (22) between Oconto County Hwy C and U.S. Hwy 141, over Oconto County Hwy D, (23) between WI Hwy 29 and Oneida, WI, over Outagamie County Hwy U, (24) between Seymour and Bonduel, WI, over WI Hwy 55, (25) between WI Hwy 55 and WI Hwy 29, over Outagamie County Hwy VV, (26) between Outagamie County Hwy VV and WI Hwy 54, over Outagamie County Hwy Y, (27) between WI Hwy 187 and Outagamie County Hwy Y, over Outagamie County Hwy G, (28) between Plover and Wisconsin Rapids, WI, over WI Hwy 54, (29) between Stevens Point and Wisconsin Rapids, WI, from Wisconsin Rapids over WI Hwy 34 to junction Wood County Hwy P, then over Wood County Hwy P to the Wood-Portage County Line, then over Portage County Hwy P to Stevens Point, WI, and return over the same route, (30) between Appleton and Wrightstown, WI, over WI Hwy 96, (31) between Appleton, WI, and Calumet County Hwy D, over U.S. Hwy 10, (32) between Outagamie County Hwy E and U.S. Hwy 10, from junction Outagamie County Hwy E and Outagamie County Hwy N, over Outagamie County Hwy N to Outagamie-Calumet County line, then over Calumet County Hwy N to junction U.S. Hwy 10, and return over the same route, (33) between U.S. Hwy 10 and Freedom, WI, over WI Hwy 55, (34) between U.S. Hwy 41 and Outagamie County Hwy S, over Outagamie County Hwy J, (35) between U.S. Hwy 41 and Outagamie Hwy J, from Junction U.S. Hwy 41 and Brown County Hwy S, over Brown County Hwy S to Brown-Outagamie County line, then over Outagamie County Hwy S to Outagamie County Hwy J, and return over the same route, (36) between U.S. Hwy 41 and Outagamie County Hwy E, from junction U.S. Hwy 41 and Brown County Hwy F, over Brown County Hwy F to Brown-outagamie County line, then over Outagamie County Hwy EE to Outagamie County Hwy E, and return over the same route, (37) between DePere, WI, and U.S. Hwy 10, from DePere over Brown County Hwy D to the Brown-Calumet County line, then over Calumet County Hwy D to U.S. Hwy 10, and return over the same route, (38) between Hortonville and Fond du Lac, WI, over U.S. Hwy 45, (39) between Fond du Lac, WI, and junction U.S. Hwy 45 and WI Hwy 175, over WI Hwy 175, (40) between U.S. Hwy 45 and U.S. Hwy 10, over WI Hwy 114, (41) between Neenah and Oshkosh, WI, over Winnebago County Hwy A, (42) between Oshkosh and Pickett, WI, over WI Hwy 44, (43) between Omro and Berlin, WI, over WI Hwy 116, (44) between Auroraville and Berlin, WI, over WI Hwy 49, (45) between Omro and Koro, WI, over Winnebago County Hwy E, (46) between Pickett and Waukau, WI, over Winnebago County Hwy M, (47) between Cecil and Bonduel, WI, over WI Hwy 117, and (48) between Anston, WI, and WI Hwy 32 over unnumbered highway, serving all intermediate points in (1) through (48) above. (Hearing site: Green Bay or Milwaukee, WI.)

Note.—Applicant intends to tack with its presently existing authority.

MC 29910 (Sub-254F), filed February 11, 1980. Applicant: ARKANSAS-BEST FREIGHT SYSTEM, INC., 301 South 11th Street, Fort Smith, AR 72901. Representative: Don A. Smith, P.O. Box 43, 510 North Greenwood Avenue. Transporting (1) *lumber, building materials and* (2) *equipment, materials and supplies* used in the manufacture and handling of lumber and building materials, between points in TX, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Dallas, TX, or Washington, DC.)

Note.—Applicant intends to tack.

MC 30111 (Sub-2F), filed February 6, 1980. Applicant: SAL-SON TRUCKING

COMPANY, INC., 248 South Street, New York, NY 10002. Representative: Chester A. Zyblut, 366 Executive Building, 1030 Fifteenth Street, N.W., Washington, DC 20005. Transporting *general commodities*, (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment), when moving on bills of lading of freight forwarders as defined in 49 USC 10102(8). Between New York, NY, and Newark, NJ, on the one hand, and, on the other, Philadelphia, PA; points in Nassau, Suffolk, Orange, Rockland, Westchester, Putnam, and Dutchess Counties, NY, and points in NJ on and north of NJ Hwy 70 and 72 and New Haven, CT. (Hearing site: Washington, DC.)

MC 77061 (Sub-31F), filed February 5, 1980. Applicant: SHERMAN BROS., INC., 29534 Airport Road (Box 706), Eugene, OR 97402. Representative: Russell M. Allen, 1200 Jackson Tower, Portland, OR 97205. Transporting *steel plate, angle iron, bars, pipe, and channels*, (1) from the facilities of Farwest Steel Corporation at or near Boise, ID to the facilities of Farwest Steel Corporation at points in Lane County, OR; and (2) from Portland, OR to the facilities of Farwest Steel Corporation at or near Eugene, OR. (Hearing site: Portland or Eugene, OR.)

Note.—Applicant intends to tack. The purpose of (2) of the application is to convert contract to common carrier authority.

MC 78400 (Sub-82F), filed February 4, 1980. Applicant: BEAUFORT TRANSFER COMPANY, a corporation, P.O. Box 151, Gerald, MO 63037. Representative: Ernest A. Brooks II, 1301 Ambassador Bldg., St. Louis, MO 63101. Transporting (1) *scrap vinyl and scrap plastic materials* (except in bulk), from Washington, MO, to points in NJ; (2) *briefcases, looseleaf binders and fillers, travel cases, suitcases, plastic articles* (except in bulk), *advertising and promotional materials and supplies*, and *display racks and stands* for advertising materials and supplies, between Washington, MO, on the one hand, and, on the other, points in MI, NJ, MA, CT, PA, IL, and TN, and, (3) *materials, equipment, and supplies* used in the manufacture of commodities in (2) above, in the reverse direction. (Hearing site: St. Louis, MO.)

MC 97841 (Sub-23F), filed February 19, 1980. Applicant: GENERAL HIGHWAY EXPRESS, INC., Post Office Box 727, Sidney, OH 45365. Representative: David A. Turano, 100 East Broad Street, Suite 1800, Columbus, OH 43215. Transporting *compressors and parts for compressors* (except commodities which, because of size or weight, require special equipment) between the facilities of The Copeland Corporation, at or near Rushville, IN, on the one hand, and, on the other, points in KY, OH and WV. (Hearing site: Columbus, OH, or Washington, DC.)

MC 106400 (Sub-124F), filed February 11, 1980. Applicant: KAW TRANSPORT COMPANY, a corporation, P.O. Box 8510, Sugar Creek, MO 65054. Representative: James C. Swearengen, P.O. Box 456, Jefferson City, MO 65102. Transporting *petroleum lube oil*, in bulk, in tank vehicles, from Kansas City, KS, to points in MD. (Hearing site: Kansas City, MO.)

MC 106920 (Sub-92F), filed February 1, 1980. Applicant: RIGGS FOOD EXPRESS, INC., West Monroe Street, P.O. Box 26, New Bremen, OH 45869. Representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 Eleventh Street, NW, Washington, DC 20001. Transporting *frozen foodstuffs*, between the facilities of Monument Distribution Warehouse, Inc., at Indianapolis, IN, on the one hand, and, on the other, points in NJ, restricted to transportation of traffic originating at or destined to the named facilities. (Hearing site: Indianapolis, IN.)

MC 106920 (Sub-93F), filed February 4, 1980. Applicant: RIGGS FOOD EXPRESS, INC., W. Monroe St., P.O. Box 26, New Bremen, OH 45869. Representative: E. Stephen Heisley, 805 McLachlen Bank Bldg., 666 Eleventh St., Washington, DC 20001. Transporting *alcoholic liquors* (except in bulk in tank vehicles) and *materials, equipment and supplies* used in the manufacture and distribution of alcoholic liquors, (1) between Bardstown and Louisville, KY, on the one hand, and, on the other, points in AR, TN, KY, IL, IN, MI, OH, NY, PA, WV, NC, SC, GA, and FL, and (2) between Plainfield, IL, on the one hand, and, on the other, points in IL, WI, MI, IN, MN, IA, MO, ND, SD, NE, KS, OK, MT, WY, CO, and NY, restricted to the transportation of traffic originating at or destined to the facilities of Hiram Walker & Sons, Inc. (Hearing site: Chicago, IL.)

MC 109490 (Sub-19F), filed February 15, 1980. Applicant: HEDING TRUCK SERVICE, INC., P.O. Box 97, Union Center, WI 53962. Representative: Ronald E. Laitsch, 117 South Third St., Watertown, WI 53094. Transporting (1) *foodstuffs and lecithin*, from Elroy and Wisconsin Rapids, WI, Dawson and Clarkfield, MN, Springfield, KY, Helena, AR, Mexico, MO, and LaFargeville, NY, to points in IL, WI, MI, OH, IA, CA, TX, OK, AR, MO, KS, IN, KY, and MN, and (2) *dry milk products and blended soy flour*, from LaCrosse, WI, to points in the United States (except AK and HI). (Hearing site: Chicago, IL, or Madison, WI.)

MC 113651 (Sub-337F), filed February 28, 1980. Applicant: INDIANA REFRIGERATOR LINES, INC., P.O. Box 552, Riggin Road, Muncie, IN 47305. Representative: Henry Higgs (same address as applicant). Transporting *cleaning, buffing or polishing compound, textile softeners, lubricants, hypochlorite solutions, deodorants or disinfectants, paints, dishwashing machinery, and coffee filters* (except commodities in bulk), (1) from Avenel, NJ, to points in FL and NC, (2) from Joliet, IL, to points in NC and TN, and (3) from Dallas, TX, to New Orleans, LA, Memphis, TN and Little Rock, AR. (Hearing site: Minneapolis, MN or Washington, DC.)

MC 114211 (Sub-454F), filed January 28, 1980. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, IA 50704. Representative: Kurt E. Vragel, Jr. (same address as applicant). Transporting (1) *such commodities* as are dealt in or used by manufacturers, dealers, or distributors, of material handling equipment, self-propelled articles, and attachments, parts, and accessories for the named commodities, between Winona, MS, on the one hand, and, on the other, points in the United States (except AK and HI), (2) *experimental, show and display material handling equipment, self-propelled articles, and attachments, parts and accessories* for the named commodities, and *paraphernalia* for the named commodities which at the time of movement is being transported for display or experiment, between points in the United States (except AK and HI), restricted in (2) to transportation of traffic between sites of facilities, experimental stations, exhibits, field demonstration, or shows owned or used by Lull Corporation. (Hearing site: St. Paul or Minneapolis, MN.)

MC 115730 (Sub-84F), filed January 28, 1980. Applicant: THE MICKOW CORP., 531 S.W. Sixth Street, P.O. Box 1774, Des Moines, IA 50306. Representative: Cecil L. Goettsch, 1100 Des Moines Building, Des Moines, IA 50307. Transporting (1) *metal buildings, wire mesh, furniture racks, grain tanks, grain crop dryers, and hydraulic presses and component parts* of the named commodities and , (2) materials and supplies used in the manufacture of the commodities named in (1), between Columbus, NE; Princeton, NC; and Woodland, CA, on the one hand, and, on the other, points in the United States (except AK and HI).

(Hearing site: Chicago, IL, or Washington, D.C.).

MC 115841 (Sub-755F), filed February 11, 1980. Applicant: COLONIAL REFRIGERATED TRANSPORTATION, INC., 9041 Executive Park Drive, Suite 110, Building 100, Knoxville, TN 37919. Representative: D. R. Beeler (same address as applicant). Transporting (1) *such merchandise* as is dealt in by discount and variety stores (except foodstuffs, furniture and commodities in bulk); and (2) *foodstuffs* (except in bulk) and *furniture* in mixed loads with the commodities in (1) (a) from Savannah, GA to points in IL, IN, KY, MI, MN, NY, OH, PA, TN, TX, and WI; and (2) from Charlotte, NC to points in CA. (Hearing site: Detroit, MI, or Washington, D.C.)

MC 115931 (Sub-109F), filed February 14, 1980. Applicant: BEE LINE TRANSPORTATION, INC., P.O. Box 3987, Missoula, MT 59801. Representative: Gene P. Johnson, P.O. Box 2471, Fargo, ND 58108. Transporting (1) *tractors* (except truck tractors), and (2) *parts, implements, attachments and accessories* for the commodities in (1) from the facilities of Belarus Machinery, Inc., at or near Milwaukee, WI, to points in the United States, in and west of WI, IL, MO, AR, and TX (except AK and HI), restricted to transportation of traffic originating at the named origins and destined to the named destinations. (Hearing site: Milwaukee, WI.)

MC 115931 (Sub-110F), filed February 14, 1980. Applicant: BEE LINE TRANSPORTATION, INC., P.O. Box 3987, Missoula, MT 59801. Representative: Gene P. Johnson, P.O. Box 2471, Fargo, ND 58108. Transporting *steel pipe* from the facilities of Colt Industries, Trent Tube Division, at or near East Troy, WI, and Fullerton, CA, to those points in the US in and west of WI, IL, MO, AR, and LA (except AK and HI). (Hearing site: Milwaukee, WI.)

MC 115931 (Sub-111F), filed February 14, 1980. Applicant: BEE LINE TRANSPORTATION, INC., P.O. Box 3987, Missoula, MT 59801. Representative: Gene P. Johnson, P.O. Box 2471, Fargo, ND 58108. Transporting (1) *bulk storage tanks and smokestacks*, and (2) *materials, equipment and supplies* used in the installation of the commodities in (1) from the facilities of Brown Minneapolis Tank & Fabrication Company at or near Egan, MN, to those points in the US in and west of WI, IL, MO, AR, and TX (except AK and HI). (Hearing site: Minneapolis-St. Paul, MN.)

MC 118570 (Sub-9F), filed January 28, 1980. Applicant: DeFAZIO EXPRESS, INC., 1028 Springbrook Ave., Moosic, PA 18507. Representative: John L. Alfano, 550 Mamaroneck Ave., Harrison, NY 10528. Contract carrier transporting *such merchandise* as is dealt in by grocery stores and food business houses, and *equipment, supplies and material* used in the manufacture and distribution of such commodities (except commodities in bulk), from points in CT, DE, and MD, to the facilities of Topps Chewing Gum, Inc. in Lackawanna and Luzerne Counties, PA, under continuing contract(s) with Topps Chewing Gum, Inc. of Duryea, PA. (Hearing site: New York, NY.)

Note.—Dual operations may be involved.

MC 118570 (Sub-10F), filed February 11, 1980. Applicant: DeFAZIO EXPRESS, INC., 1028 Springbrook Ave., Moosic, PA 18507. Representative: John L. Alfano, 550 Mamaroneck Ave., Harrison, NY 10528. Contract carrier, transporting *such merchandise* as is dealt in by grocery stores and food business houses, and *equipment, supplies and material* used in the manufacture and distribution of such commodities (except commodities in bulk), from the facilities of Lever Brothers Company at Baltimore, MD, to points in Broome, Chemung, and Tioga Counties, NY, and Columbia, Lackawanna, Luzerne, Monroe, Montour, Northumberland, Wayne, and Pike Counties, PA, under continuing contract(s) with Lever Brothers Company, of New York, NY. (Hearing site: New York, NY.)

Note.—Dual operations may be involved.

MC 123061 (Sub-135F), filed February 19, 1979. Applicant: LEATHAM BROTHERS, INC., 46 Orange St., P.O. Box 16026, Salt Lake City, UT 84116. Representative: Harry D. Pugsley, 1283 F. South Temple, #501, Salt Lake City, UT 84102. Transporting *masonry products* from points in UT to points in NV, CA, OR, WA, and ID. (Hearing site: Salt Lake City, UT or Boise, ID.)

MC 123371 (Sub-4F), filed February 7, 1980. Applicant: EDLIN BROS., INC., Route 2, New Haven, KY 40051. Representative: Herbert D. Liebman, P.O. Box 478, Frankfort, KY 40602. *Contract carrier* transporting (1) *alcoholic beverages* and (2) *materials* used in the distribution of alcoholic beverage products (except commodities in bulk in tank vehicles) between Louisville, KY., on the one hand, and, on the other, points in Jefferson, Nelson, Bullitt and Franklin Counties, KY under continuing contract(s) with Hiram Walker and Sons, Incorporated, of Peoria, IL. (Hearing site: Louisville or Frankfort, KY.)

MC 124170 (Sub-148F), filed February 8, 1980. Applicant: FROSTWAYS, INC., 3000 Chrysler Service Drive, Detroit, MI 48207. Representative: William J. Boyd, 2021 Midwest Road, Suite 205, Oak Brook, IL 60521. Transporting *meats, meat products and meat by-products,* and *articles distributed by meat-packing houses* as described in Sections A and C or Appendix I to the report in *Description in Motor Carrier Certificates,* 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the facilities used by John Morrell & Co., at or near Memphis, TN to points in CT, DE, ME, MD, MA, NH, NJ, NY, PA, RI, VA, VT, WV and DC, restricted to the transportation of traffic originating at the facilities used by John Morrell & Co. (Hearing site: Chicago, IL or Washington, DC.)

MC 124920 (Sub-18F), filed February 24, 1980. Applicant: LA BAR'S, INC., 771 Scott Street, Wilkes Barre, PA 18705. Representative: Peter Wolff, 722 Pittston Avenue, Scranton, PA 18505. Transporting *iron or steel tubing* (except when requiring special equipment) between the facilities of Roth Steel Tube at Newton Falls, OH, and the facilities of Roshel Industries at East Palestine, OH, on the one hand, and, on the other, the facilities of Roth American, Inc., at Wilkes Barre, PA. (Hearing site: Philadelphia, PA.)

MC 126930 (Sub-35F), filed February 4, 1980. Applicant: BRAZOS TRANSPORT CO., a corporation, P.O. Box 2746, Lubbock, TX 79408. Representative: Richard Hubbert, P.O. Box 10236, Lubbock, TX 79408. Transporting *gypsum, gypsum products, asbestos products, building materials* (except lumber), and *materials and supplies* used in the manufacture, distribution and installation of such commodities (except liquid commodities in bulk, in tank vehicles) between points in TX, OK, AZ, AL, IL, IN, IA, KS, MO, MS, NE, TN, UT, OH, MN, WY, MI, KY, FL, MT, SD, WI, LA, AR, CO, GA, ND, and NM, restricted to the transportation of traffic originating at or destined to the facility of National Gypsum Company. (Hearing site: Dallas, TX or New Orleans, LA.)

MC 126930 (Sub-36F), filed January 28, 1980. Applicant: BRAZOS TRANSPORT CO., a corporation, P.O. Box 2746, Lubbock, TX 79408. Representative: Richard Hubbert, P.O. Box 10236, Lubbock, TX 79408. Transporting *iron and steel articles* from the facilities of Nucor Corp. at or near Norfolk, NE to points in IA, MO, KS, OK, AR, TX, LA and TN. (Hearing site: Kansas City, MO or Lubbock, TX.)

MC 126930 (Sub-37F), filed February 4, 1980. Applicant: BRAZOS TRANSPORT CO., a corporation, P.O. Box 2746, Lubbock, TX 79408. Representative: Richard Hubbert, P.O. Box 10236, Lubbock, TX 79408. Transporting *iron*

and steel pipe, coated and wrapped, from the facilities of Gaido-Lingle Co., Inc., at or near Pearland, TX, El Reno, OK and Fort Collins, CO, to points in KS, NE, WY, OK, TX, AR, LA, MO, IA, CO and UT. (Hearing site: Houston or Lubbock, TX.)

MC 127840 (Sub-160F), filed January 28, 1980. Applicant: MONTGOMERY TANK LINES, INC., 17550 Fritz Drive, Lansing, IL 60438. Representative: William H. Towle, 180 North LaSalle Street, Chicago, IL 60601. Transporting *calcium bromide,* in bulk, in tank vehicles, from the facilities of Velsicol Chemical Corp., at or near Beaumont, TX, to points in LA. (Hearing site: Chicago, IL or Houston, TX.)

MC 128030 (Sub-132F), filed February 1, 1980. Applicant: THE STOUT TRUCKING CO., INC., P.O. Box 98, Urbana, IL 61801. Representative: James R. Madler, 120 W. Madison St., Chicago, IL 60602. Transporting *animal feed, animal feed ingredients, and materials and supplies* used in the manufacture and distribution of animal feed (except commodities in bulk), between the facilities of Kal Kan Foods, Inc., in Los Angeles and Orange Counties, CA and at Odgen, UT, and Columbus, OH, on the one hand, and, on the other, points in the US (except AK and HI). (Hearing site: Chicago, IL.)

MC 133591 (Sub-74F), filed June 26, 1979, as previously noticed in Federal Register issue of February 7, 1980. Applicant: WAYNE DANIEL TRUCK, INC., P.O. Box 303, Mount Vernon, MO 65712. Representative: Charles A. Daniel (same address as applicant). Transporting *household appliances and fixtures, electrical appliances, equipment, parts and tools, lawn and garden tools, and tool boxes,* from Kirksville, Jefferson City, Boonville, Macon, Moberly, Clarence, St. Louis, and Searcy, AR, to those points in the United States in and west of TX, NM, OK, CO, WY, and MT (except AK and HI). (Hearing site: Kansas City or St. Louis, MO.)

Note.—This republication includes equipment, parts and tools and corrects the spelling of Kirksville. Dual operations may be involved.

MC 133591 (Sub-95F), filed February 6, 1980. Applicant: WAYNE DANIEL TRUCK, INC., P.O. Box 303, Mt. Vernon, MO 65712. Representative: A. J. Swanson, P.O. Box 1103, 226 N. Phillips Avenue, Sioux Falls, SD 57101. Transporting (1) *bicycles and tricycles* and (2) *equipment, materials and supplies* used in the manufacture and distribution of bicycles and tricycles, between Ponca City, OK, and Los Angeles, CA, on the one hand, and, on the other, points in IL and in that part of the United States in and west of MN, IA, MO, AR, and LA. (Hearing site: Kansas City, MO or Oklahoma City, OK.)

MC 135070 (Sub-150F), filed February 15, 1980. Applicant: JAY LINES, INC., P.O. Box 30180, Amarillo, TX 79120. Representative: Gailyn L. Larsen, P.O. Box 82816, Lincoln, NE 68501. Transporting *such commodities* as are dealt in or used by retail filling stations and automobile service centers or are required in the distribution of such commodities (except in bulk), (1) between the facilities of Texstar Automotive Distribution Group, Inc., at or near St. Louis, MO, on the one hand, and, on the other, points in the US (except AK and HI) and (2) from points in the US (except AK and HI) to the facilities of Texstar Automotive Distribution Group, Inc., at or near Detroit, MI, and Mt. Laurel, NJ. (Hearing site: St. Louis, MO, or Dallas, TX.)

Note.—Dual operations are involved.

MC 135861 (Sub-63F), filed February 15, 1980. Applicant: LISA MOTOR LINES, INC., P.O. Box 4550, Fort Worth, TX 76106. Representative: Billy R. Reid, 1721 Carl Street, Fort Worth, TX 76103. *Contract carrier,* transporting *canned and preserved foodstuffs,* from the facilities of Duffy-Mott Company, Inc., at Aspers, PA and Hamlin, Holley and Williamson, NY, to points in AR, CO, IL, KS, LA, MI, MO, OK, and TX, under continuing contracts(s) with Duffy-Mott Company, Inc., of New York, NY. (Hearing site: Fort Worth, TX, or New York, NY.)

MC 136161 (Sub-30F), filed February 6, 1980. Applicant: ORBIT TRANSPORT, INC., P.O. Box 163, Spring Valley, IL 61362. Representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 Eleventh Street, NW, Washington, DC 20001. Transporting *agricultural chemicals and materials and supplies* used in the manufacture and packaging of agricultural chemicals (except in bulk), between the facilities of American Cyanamid Company, at or near Atlanta, Mendota and Rockford, IL, on the one hand, and, on the other, points in IN, MI, OH, KY, TN, WV, WI, IA, MO and MN. (Hearing site: Newark, NJ.)

MC 138960 (Sub-14F), filed January 28, 1980. Applicant: ROKO EXPRESS, INC., 819 West Fifth Ave., Columbus, OH 43212. Representative: H. Barney Firestone, 10 South LaSalle St., Suite 1600, Chicago, IL 60603. Transporting *sugar,* from points in LA to points in OH, MI, IN, KY, TN, IL and WI. (Hearing site: New Orleans, LA, or Columbus, OH.)

MC 138960 (Sub-16F), filed February 4, 1980. Applicant: ROKO EXPRESS, INC., 819 West Fifth Avenue, Columbus, OH 43212. Representative: Thomas M. O'Brien, 10 South LaSalle Street, Chicago, IL 60603. Transporting *canned and preserved foodstuffs,* from the facilities of Heinz U.S.A., Division of H.J. Heinz Company at Holland, MI, Fremont, OH and Toledo, OH to points in AL, AR, KY, GA, LA, MS and TN, restricted to the transportation of traffic originating at the named facilities and destined to the indicated destinations. (Hearing site: Pittsburgh, PA or Columbus, OH.)

MC 139190 (Sub-4F), filed January 14, 1980. Applicant: KOCK TRUCK LINE, INC., 619 Iowa, Sabetha, KS 66534. Representative: Eugene W. Hiatt, 207 Casson Building, 603 Topeka Boulevard, Topeka, KS 66603. *Contract carrier* transporting *fertilizer compound,* in van, hopper bottom and pneumatic vehicles, from Fairbury, NE, to points in CO, IL, IN, IA, KS, MN, MO, NE, and OH.

MC 142080 (Sub-11F), filed January 24, 1980. Applicant: LITE TRANSPORT, INC., 480 Neponset Street, Canton, MA 02021. Representative: Frederick T. O'Sullivan, P.O. Box 2184, Peabody, MA 01960. *Contract carrier,* transporting *such commodities* as are dealt in by manufacturers of pulpboard and fibreboard and *materials, supplies and equipment* used in connection with such commodities (except commodities in bulk, in tank vehicles), between the facilities of The Newark Group, Inc., at Bradford, Salem, and Natick, MA, Newark, NJ, and Uncasville, CT, on the one hand, and, on the other, points in the United States in and east of WI, IL, MO, AR, and TX, under continuing contract(s) with The Newark Group, Inc., of Haverhill, MA. (Hearing site: Boston, MA.)

MC 142640 (Sub-5F), filed February 4, 1980. Applicant: P.W.K. TERMINALS, INC., 6 Highgate Course, St. Charles, IL 60174. Representative: James R. Madler, 120 W. Madison St., Chicago, IL 60602. Transporting *general commodities* (except in bulk, household goods, as defined by the Commission, and classes A and B explosives), between points in IL on and west of IL Hwy 59, on and north of U.S. Hwy 34, on and east of IL Hwy 23, and south of the IL–WI State line, on the one hand, and, on the other, Kenosha, Racine and Milwaukee, WI. (Hearing site: Chicago, IL.)

Note.—Dual operations are involved.

MC 144030 (Sub-5F), filed August 23, 1979, and previously noticed in Federal Register issue of February 26, 1980. Applicant: DRUE CHRISMAN, INC., U.S. 50 West, P.O. Box 264, Lawrenceburg, IN 46025. Representative: Robert W. Loser II, 1101 Chamber of

Commerce Bldg., Indianapolis, IN 46204. Transporting (1) *barrel staves and headings,* from points in AR, IL, IN, MO, OH, PA, TN, and WV to Louisville, KY, (2) *empty barrels,* from Memphis, TN, to points in IN and KY, and (3) *alcoholic liquors and wine,* in containers, from Lawrenceburg, IN, and points in KY to points in CA and CO. (Hearing site: Louisville, KY, or Indianapolis, IN.)

Note.—This republication shows points in KY as origin points in (3).

MC 144330 (Sub-92F), filed January 28, 1980. Applicant: UTAH CARRIERS, INCORPORATED, P.O. Box 1218, Freeport Center, Clearfield, UT 84016. Representative: Charles D. Midkiff (same address as applicant). Transporting *iron and steel articles* (except in bulk), from the facilities of North Star Steel Co., at or near Monroe, MI to points in AR, CO, IL, IN, KS, OK and TX, restricted to the transportation of traffic originating at the named facilities and destined to points in the named destination states. (Hearing site: St. Paul, MN.)

MC 144541 (Sub-1F), filed February 4, 1980. Applicant: BALDWIN LEASING COMPANY, INC., 801 Industrial Blvd., Bay Minette, AL 36507. Representative: Robert E. Tate, P.O. Box 517, Evergreen, AL 36401. Transporting *paper and paper products, corrugated sheets, and boxes* between points in Mobile and Baldwin Counties, AL, on the one hand, and, on the other, points in LA, MS, AL, TN, GA, FL, NC, SC, WI, MI, VA, MD, PA, and TX. (Hearing site: Mobile or Birmingham, AL.)

MC 144570 (Sub-4F), filed January 24, 1980. Applicant: DIVERSIFIED CARRIERS, INC., 903 Sixth Street, N.W., Rochester, MN 55901. Representative: D. Douglas Titus, Suite 510, Benson Building, Sioux City, IA 51101. Contract carrier, transporting *tallow,* in bulk, from the facilities of Iowa Beef Processors, Inc. at or near Dakota City and West Point, NE, Denison and Ft. Dodge, IA, and Luverne, MN, to points in CO, IL, IN, IA, MN, OH, WI, ND, SD, NE, KS, MO, and KY, under continuing contract(s) with Iowa Beef Processors, Inc. (Hearing site: Sioux City, IA, or Minneapolis, MN.)

MC 144630 (Sub-41F), filed February 8, 1980. Applicant: STOOPS EXPRESS, INC., 2239 Malibu Court, Anderson, IN 46015. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. Transporting (1) *containers, container ends and closures,* (2) *commodities* manufactured or distributed by manufacturers and distributors of containers in mixed loads with containers, and (3) *materials, equipment and supplies* used in the manufacture and distribution of containers, container ends and closures, between points in the United States (except AK and HI), restricted against the transportation of commodities in bulk and to transportation of traffic originating at and destined to the facilities of or used by Ball Corporation. (Hearing site: Indianapolis, IN or Chicago, IL.)

MC 145560 (Sub-13F), filed February 12, 1980. Applicant: NORTH ALABAMA TRANSPORTATION, INC., Post Office Box 38, Ider, AL 35981. Representative: William P. Jackson, Jr., 3426 N. Washington Boulevard, Post Office Box 1240, Arlington, VA 22210. *Contract carrier* transporting *carpet,* from Chatsworth, Dalton, Ringgold, Calhoun, Rome, and Eden, GA, and Dallas, TX, to Los Angeles, Sacramento, and Oakland, CA, under continuing contract(s) with L. D. Brinkman Co. Greenbraun Division, of City of Industry, CA. (Hearing site: Los Angeles, CA.)

MC 146361 (Sub-12F), filed February 6, 1980. Applicant: WOLTER TRUCK LINES, INC., R. D. 1, Box 197, Greenwood, DE 19950. Representative: Chester A. Zyblut, 366 Executive Building, 1030 Fifteenth Street, N.W., Washington, DC 20005. Transporting *limestone and limestone products,* in bulk, in dump vehicles, from Hanover, Plymouth Meeting, and King of Prussia, PA, to points in Kent and Sussex Counties, DE, and Kent, Queen Annes, Talbot, Caroline, Wicomico, Dorchester, Somerset and Worcester Counties, MD. (Hearing site: Washington, DC.)

MC 147131 (Sub-4F), filed February 5, 1980. Applicant: KENNAMER BROTHERS, INC., Route 2, Box 866, Grant, AL 35747. Representative: Donald B. Sweeney, Jr., 603 Frank Nelson Bldg., Birmingham, AL 35203. Transporting *meats, meat products and meat by-products, dairy products, and articles distributed by meat-packing houses* as described in sections A, B, and C of appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766 (except commodities in bulk, in tank vehicles), from the facilities of or used by Swift & Company in IL, IA, MN, NE, KS, and WI to points in AL, GA, TN, and NC on and west of U.S. Hwy 220, SC on and west of U.S. Hwy 52, and FL on and north of FL Hwy 92, restricted to the transportation of traffic originating at the named facilities and destined to the named points. (Hearing site: Dallas, TX or Kansas City, KS.)

MC 147131 (Sub-5F), filed February 5, 1980. Applicant: KENNAMER BROTHERS, INC., Route 2, box 866, Grant, AL 35747. Representative: Donald B. Sweeney, Jr., 603 Frank Nelson Building, Birmingham, AL 35203. Transporting *meats, meat products, and meat by-products, dairy products, and articles distributed by meat-packing houses* as described in sections A, B, and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766 (except commodities in bulk, in tank vehicles), from the facilities of or used by Wilson Foods Corporation at Albert Lea, MN; Monmouth and Peoria, IL; Des Moines, Cherokee, and Cedar Rapids, IA to points in AL, GA, and TN, restricted to the transportation of traffic originating at the above named facilities and destined to the named destinations. (Hearing site: Dallas, TX, or Kansas City, MO.)

MC 147681 (Sub-10F), filed February 5, 1980. Applicant: HOYA EXPRESS, INC., P.O. Box 543, R. D. #2, West Middlesex, PA 16159. Representative: Henry M. Wick, Jr., 2310 Grant Building, Pittsburgh, PA 15219. Transporting *cleaning compounds, liquid or powder, ice melting compounds, and equipment, materials, and supplies* used in the manufacture or distribution of the above-named commodities, between Barberton, OH, on the one hand, and, on the other, points in KY, MD, MI, NJ, NY, PA, RI, and TN. (Hearing site: Cleveland, OH, or Washington, DC.)

MC 147791 (Sub-2F), filed February 6, 1980. Applicant: H. S. SOWARDS & SONS, INC., 350 North Vernal Avenue, Box 308, Vernal, UT 84078. Representative: Richard P. Kissinger, Steele Park, Suite 330, 50 South Steele Street, Denver, CO 80209. *Contract carrier,* transporting *petroleum and petroleum products,* in bulk, in tank vehicles, between points in AZ, CO, NM, UT and WY, under continuing contracts) with Gary Refining Company and Gary Energy Corporation, of Englewood, CO. (Hearing site: Denver, CO or Vernal, UT.)

MC 147840 (Sub-3F), filed February 11, 1980. Applicant: NORTH PACIFIC LUMBER CO., 1505 S. E. Gideon, Portland, OR 97202. Representative: Michael D. Crew, 1700 Standard Plaza, Portland, OR 97204. Transporting *flat glass,* from the facilities of Guardian Industries in Fresno County, CA, to Sweet Grass and Port of Rooseville, MT, Eastport and Porthill, ID, Blair, Sumas, Laurie, Oroville, Port Angeles, Port Townsend and Metaline Falls, WA, restricted to the transportation of traffic having a subsequent movement in foreign commerce. (Hearing site: Portland, OR.)

MC 148270 (Sub-9F), filed January 14, 1980. Applicant: BRELAR, INC., P.O. Box 796, Greenville, MS 38701. Representative: K. Larry Stivers, 1553

Sunridge Cove, Greenville, MS 38701. Transporting *flour, corn meal, and feed products* (except in bulk) from the facilities of Shawnee Milling Company, at or near Shawnee, OK, to points in AL, AR, FL, TN, GA, LA, SC, MS, and NC. (Hearing site: Jackson, MS, or Oklahoma City, OK.)

MC 148780 (Sub-2F), filed January 24, 1980. Applicant: ENGINEERED TRANSPORT SERVICES, INC., 3001 Ponce de Leon Boulevard, Suite 201, Coral Gables, FL 33134. Representative: Charles R. Stiller (same address as applicant). *Contract carrier* transporting *motor vehicle parts, and materials, supplies and equipment* used in the manufacture of motor vehicle parts (except commodities in bulk) between Dallas, TX and those points in LA west of the Mississippi River (except points in the Commercial Zone of New Orleans, LA), under continuing contract(s) with General Motors Corporation, (General Motors Parts Division), of Flint, MI. (Hearing site: Miami or Orlando, FL.)

MC 149010 (Sub-1F), filed February 11, 1980. Applicant: ALL WAYS TRANSFER, INC., 4987 N. University Dr., Suite 14–B, Lauderhill, FL 33321. Representative: Richard M. Tettelbaum, Fifth Fl., Lenox Towers S., 3390 Peachtree Rd., N.E., Atlanta, GA 30326. *Contract carrier,* transporting *general commodities* (except commodities in bulk, classes A and B explosives, household goods as defined by the Commission, and commodities which because of size or weight require special equipment, and frozen foods), between facilities of Reliable Freight Distribution & Warehousing, Inc., in Dade County, FL and points in FL, under continuing contract(s) with Reliable Freight Distribution & Warehousing, Inc. of Lauderhill, FL. (Hearing site: Miami, FL.)

MC 149330F, filed February 1, 1980. Applicant: DUNBAR ARMORED SECURITY, INC., 23 Newfield Ave., Hartford, CT 06106. Representative: John E. Silliman, 101 Pearl St., P.O. Box 3197, Hartford, CT 06103. *Contract carrier,* transporting *bank bills, bonds, securities, notes, drafts, and other valuable papers,* (1) between points in CT, on the one hand, and, on the other, Boston, Worchester, and Springfield, MA, New York, NY, and Providence, RI, (2) between Boston, Worchester, and Springfield, MA, on the one hand, and, on the other, New York, NY, and (3) between Providence, RI, on the one hand, and, on the other, New York, NY, and Boston, Worchester, and Springfield, MA, under continuing contract(s) with financial institutions. (Hearing site: Hartford or New Haven, CT.)

MC 149371F, filed January 25, 1980. Applicant: VICTOR J. WILLIAMS, d.b.a. VJ'S TOWING SERVICE, 10705 Freemont Pike, Perrysburg, OH 43551. Representative: Kevin R. Reichley, 50 West Broad Street, Columbus, OH 43215. Transporting *wrecked and disabled motor vehicles and replacement vehicles* for wrecked and disabled motor vehicles (except trailers designed to be drawn by passenger automobiles) between points in OH, on the one hand, and, on the other, points in IL, IN, IA, KY, MI, NY, PA, TN and WV. (Hearing site: Columbus or Toledo, OH.)

Passengers

MC 142960 (Sub-3F), filed January 29, 1980. Applicant: HUGH AND LAILA PIXLEY, d.b.a. PIXLEY TRANSPORTATION, 1410 Oak, P.O. Box 927, Forsyth, MT 59327. Representative: Hugh Pixley (same address as applicant). Contract carrier transporting *passengers and their baggage* in the same vehicle with passengers, between Bundray, Bonner, Kootena, and Shoshone, ID, Divide, Williams, McKenzie, Burke, Mountrail, Reneville and Wardin, ND, points in Spokane County, WA, and in Lincoln, Sanders, Mineral, Glacier, Flathead, Lake, Missoula, Granite, Powell, Lewis and Clark, Teton Pondera, Liberty, Cascade, Jefferson, Broadwater, Gallatin, Meagher, Shautau, Hill, Blain, Fergus, Judith Basin, Wheatland, Sweet Grass, Park, Phillips, Petrolum, Musselshell, Golden Valley, Macome, Roosevelt, Daniels, Sheiral, and Richards Counties, MT, under continuing contract(s) with Burlington Northern, Inc., of Missoula, MT. (Hearing site: Billings or Forsyth, MT.)

MC 149340F, filed January 28, 1980. Applicant: HEIDT BUS LINE, Route No. 3, Box 123A, Dickinson, ND 58601. Representative: Clement Heidt (same address as applicant). Transporting *passengers and their baggage,* in charter operations, between Dickinson, ND, and points in Stark, Dunn, Billings, Golden Valley, McKenzie, Hettinger, Slope, Williams, and Bowman, Counties, ND, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Dickinson or Bismarck, ND.)

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Decided: February 29, 1980.

By the Commission, Review Board Number 3, Members Parker, Fortier and Hill.

MC 138157 (Sub-216F), filed January 11, 1980. Applicant: SOUTHWEST EQUIPMENT RENTAL, INC., d.b.a. SOUTHWEST MOTOR FREIGHT, 2931 S. Market St., Chattanooga, TN 37410. Representative: Patrick E. Quinn, P.O. Box 9596, Chattanooga, TN 37412. Transporting (1)(a) *carpet strip, molding, staples, tools, nails, adhesives, sealants, solvents, stains, wood preservatives, and* (b) *materials, equipment and supplies* used in the manufacture and distribution of commodities in (a) above, from Asheville, NC to points in the United States (except AK and HI), and (2) *materials, equipment and supplies* used in the manufacture and distribution of commodities in (1) above, in the reverse direction, restricted against the transportation of commodities in bulk. (Hearing site: Chattanooga, TN.)

Note.—Dual operations may be involved.

MC 138206 (Sub-16F), filed January 11, 1980. Applicant: TRULINE CORPORATION, 4455 So. Cameron Ave., Las Vegas, NV 89103. Representative: Robert G. Harrison, 4299 Jamed Dr., Carson City, NV 89701. Transporting (1) *lumber, wood products and building materials,* from points in Los Angeles and Orange Counties, CA, and Clark County, NV, to points in AZ, CO, and NM, and (2) *gypsum and gypsum products,* from points in Lincoln and Bernalillo Counties, NM, to points in Clark County, NV. (Hearing site: Las Vegas, NV.)

MC 139906 (Sub-88F), filed January 8, 1980. Applicant: INTERSTATE CONTRACT CARRIER CORPORATION, 2156 West 2200 So., P.O. Box 30303, Salt Lake City, UT 84125. Representative: Richard A. Peterson, 521 So. 14th St., P.O. Box 81849, Lincoln, NE 68501. Transporting *carbon black,* in bags, from Borger and Eldon (Baytown), TX, to points in the United States (except AK and HI). (Hearing site: Lincoln, NE, or Salt Lake City, UT.)

Note.—Dual operations may be involved.

MC 139906 (Sub-90F), filed February 1, 1980. Applicant: INTERSTATE CONTRACT CARRIER CORPORATION, 2156 West 2200 So., P.O. Box 30303, Salt Lake City, UT 84125. Representative: Richard A. Peterson, 521 So. 14th St., P.O. Box 81849, Lincoln, NE 68501. Transporting *such commodities* as are dealt in and used by wholesale, retail and chain grocery and food business houses (except in bulk), from the facilities of Lever Brothers Company, at or near Los Angeles, CA, to points in the United States in and east of ND, SD, NE, KS, OK, and TX. (Hearing site: Lincoln, NE, or Salt Lake City, UT.)

Note.—Dual operations may be involved.

MC 139906 (Sub-91F), filed February 1, 1980. Applicant: INTERSTATE

CONTRACT CARRIERS CORPORATION, 2156 West 2200 So., P.O. Box 30303, Salt Lake City, UT 84125. Representative: Richard A. Peterson, 521 So. 14th St., P.O. Box 81849, Lincoln, NE 68501. Transporting *foodstuffs* (except commodities in bulk), from the facilities of Burry Division, The Quaker Oats Company, at or near Edison, New Brunswick, and Elizabeth, NJ, to points in the United States (except AK and HI). (Hearing site: Salt Lake City, UT, or Lincoln, NE.)

Note.—Dual operations may be involved.

MC 139906 (Sub-92F), filed February 1, 1980. Applicant: INTERSTATE CONTRACT CARRIER CORPORATION, 2156 West 2200 So., P.O. Box 30303, Salt Lake City, UT 84125. Representative: Richard A. Peterson, 521 So. 14th St., P.O. Box 81849, Lincoln, NE 68501. Transporting *plumber's goods,* from the facilities of Norris Industries, Price Pfister Division, at or near Pacoima, CA and the facilities of Norris Industries, Plumbing Fixtures Divison, at or City of Industry, CA, to Atlanta, GA, Chicago, IL, Elizabeth, NJ, and Dallas, TX. (Hearing site: Salt Lake City, UT, or Lincoln, NE.)

Note.—Dual operations may be involved.

MC 139906 (Sub-93F), filed February 4, 1980. Applicant: INTERSTATE CONTRACT CARRIER CORPORATION, 2156 West 2200 So., P.O. Box 30303, Salt Lake City, UT 84127. Representative: Richard A. Peterson, 521 So. 14th St., P.O. Box 81849, Lincoln, NE 68501. Transporting *office furniture and plastic articles* (except in bulk), from the facilities of Wright Line, Inc., a subsidiary of Barry Wright, Inc., at or near Worcester, MA, to points in the United States (except AK and HI). (Hearing site: Salt Lake City, UT, or Lincoln, NE.)

Note.—Dual operations may be involved.

MC 140016 (Sub-11F), filed January 9, 1980. Applicant: TRANSPORTATION SERVICES, INC., 1320 E. Glendale Ave., Sparks, NV 89431. Representative: Robert G. Harrison, 4299 James Dr., Carson City, NV 89701. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment), between the facilities of Silver State Shippers Association and Washoe County Shippers Association, in Washoe County, NV, on the one hand, and, on the other, points in AZ, CA, OR, and WA. (Hearing site: Reno, NV.)

MC 140806 (Sub-5F), filed January 17, 1980. Applicant: HERMS TRUCKING, INC., 620 Pear St., Trenton, NJ 08648. Representative: Alan Kahn, 120 Two Penn Center Plaza, Philadelphia, PA 19102. Contract carrier, transporting *lighting fixtures and parts, acessories, materials and supplies* used in the manufacture and distribution of lighting fixtures, between the facilities utilized by Keystone Lighting Corporation, in Philadelphia and Bucks County, PA, on the one hand, and, on the other, points in the United States east of the western boundaries of ND, SD, NE, KS, OK, and TX, under continuing contract(s) with Keystone Lighting Corporation. (Hearing site: Washington, DC, or Philadelphia, PA.)

MC 141297 (Sub-5F), filed January 29, 1980. Applicant: UNITED INDUSTRIES, INC., P.O. Box 231, Houston, MI 38851. Representative: Thomas B. Davis (same address as applicant). Contract carrier, transporting (1) *New furniture and furnishings,* from points in MS, to the facilities of Montgomery Ward, in AL, AZ, AR, CA, CO, CT, FL, GA, IA, IL, IN, KS, KY, LA, MD, MA, MI, MN, MO, MS, NE, NJ, NM, NC, NY, OH, OK, PA, SC, TN, TX, VA, WV, WI, and DC, under continuing contract(s) with Montgomery Ward, and (2) *such commodities* as are used in the manufacture of furniture, from the destination states in (1) above, to the facilities of Shannon Chair Company, in Houston, MS, and Maben Manufacturing Company, in Maben, MS, under continuing contract(s) with Shannon Chair Company and Maben Manufacturing Company. (Hearing site: Jackson, MS.)

MC 144117 (Sub-57F), filed January 17, 1980. Applicant: T.L.C. LINES, INC., P.O. Box 1090, 1666 Fabick Dr., Fenton, MO 63026. Representative: Jack H. Blanshan, 205 West Touhy Ave., Suite 200, Park Ridge, IL 60068. Transporting *such commodities as are dealt in or used by manufacturers of photographic products* (except commodities in bulk), from the facilities of Eastman Kodak Company at San Ramon, CA to Portland, OR, and Seattle, WA, restricted to the transportation of traffic originating at the named origin. (Hearing site: Washington, DC.)

MC 144117 (Sub-58F), filed February 1, 1980. Applicant: T.L.C. LINES, INC., P.O. Box 1090, Fenton, MO 63026. Representative: Jack H. Blanshan, Suite 200, 205 West Touhy Ave., Park Ridge, IL 60068. Transporting *pet foods* (except in bulk), from the facilities of Star-Kist Foods, Inc. at or near El Paso, TX to points in the United States (except AK, HI and TX), restricted to the transportation of products originating at the named origin. (Hearing site: Los Angeles, CA.)

MC 144117 (Sub-59F), filed February 1, 1980. Applicant: T.L.C. LINES, INC., P.O. Box 1090, Fenton, MO 63026. Representative: Jack H. Blanshan, Suite 200, 205 West Touhy Ave., Park Ridge, IL 60068. Transporting *canned foodstuffs and canned pet foods,* from the facilities of Star-Kist Foods, Inc. at Terminal Island, CA to points in the United States (except AK, CA and HI), restricted to the transportation of shipments originating at the named origin. (Hearing site: Los Angeles, CA.)

MC 144117 (Sub-60F), filed February 1, 1980. Applicant: T.L.C. LINES, INC., P.O. Box 1090, Fenton, MO 63026. Representative: Jack H. Blanshan, Suite 200, 205 West Touhy Ave., Park Ridge, IL 60068. Transporting: *meats, meat products, meat by-products and articles distributed by meat packinghouses,* (except hides and commodities in bulk), as defined in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766, from the facilities of Wilson Foods Corporation at Albert Lea, MN and Logansport, IN to points in CA, restricted to the transportation of traffic originating at the above named origins and destined to the named destinations. (Hearing site: Dallas, TX or Kansas City, MO.)

MC 144117 (Sub-61F), filed February 4, 1980. Applicant: T.L.C. LINES, INC., P.O. Box 1090, Fenton, MO 63026. Representative: Jack H. Blanshan, Suite 200, 205 West Touhy Ave., Park Ridge, IL 60068. Transporting *alcoholic beverages, materials, equipment and supplies used in the manufacture and distribution thereof,* (except in bulk, in tank vehicles), (1) between Ft. Smith, AR, on the one hand, and, on the other, points in AZ, CA, DE, IL, IN, KY, MD, MI, NM, NY, OH, PA, TX and WI, (2) between Bardstown, KY, on the one hand, and, on the other, FL, NY, PA and WV and (3) between New Orleans, LA, on the one hand, and, on the other, AL, AZ, AR, CA, FL, GA, LA, MS, NM, OK and TX, restricted in parts (1), (2) and (3) to the transportation of traffic either originating at or destined to the facilities of Hiram Walker & Sons, Inc. (Hearing site: Chicago, IL.)

MC 144117 (Sub-62F), filed February 4, 1980. Applicant: T.L.C. LINES, INC., P.O. Box 1090, Fenton, MO 63026. Representative: Jack H. Blanshan, Suite 200, 205 West Touhy Ave., Park Ridge, IL 60068. Transporting *paper and paper products* (except commodities in bulk) from (1) the facilities of Packaging Corporation of America at, Grand Rapids MI, Griffith IN, Mentor and Rittman OH, and St. Louis MO to points in AZ, CA, CO, ID, MT, NV, NM, OR,

UT, WA, and WY, and (2) the facilities of Packaging Corporation of America at, Hutchinson KS, to points in AZ, CA, CO, ID, IL, IA, MN, MO, MT, NE, NV, NM, OK, OR, TX, UT, WA, WI, and WY. Parts (1) and (2) restricted to the transportation of traffic originating at the named origins. (Hearing site: Chicago IL or Washington, DC)

MC-144846 (Sub-11F), filed February 4, 1980. Applicant: TRANSTATES, INC., 3216 East Westminster, Santa Ana, CA 92703. Representative: Patricia M. Schnegg, 707 Wilshire Blvd., 1800 United California Bank Bldg., Los Angeles, CA 90017. Transporting *general commodities* (except commodities of unusual value, household goods as defined by the Commission, commodities in bulk, classes A and B explosives, and those requiring the use of special equipment), between the facilities of Westinghouse located throughout the United States, on the one hand, and; on the other, points in the United States (except AK and HI). (Hearing site: Los Angeles, CA.)

MC 144986 (Sub-2F), filed January 8, 1980. Applicant: STAHLER TRUCKING & LEASING, INC., 208 East Harrison St., Wapakoneta, OH 45895. Representative: John L. Alden, 1396 West Fifth Ave., P.O. Box 12241, Columbus, OH 43212. *Contract carrier,* transporting *plastic and rubber articles,* (except commodities in bulk) *candles, printed forms and cartons, aluminum kitchenware, pottery, gloves, television and cathode ray tubes, glass lenses, and glassware,* from the facilities of Lancaster Colony Corporation and Barr, Inc., Candle-lite, Inc., Colony Printing & Labeling, Inc., Enterprise Aluminum Company, Indiana Glass Company, Jackson Corporation, Koneta Rubber Company, American Mat Corporation, Lancaster Glass Company, National Glove, Inc., The Nelson McCoy Pottery Co., and Pretty Products, Inc., at or near Eaton and Dunkirk, IN, Sandusky, Leesburg, Massillon, Jackson, Wapakoneta, Lancaster, Mt. Sterling, Roseville and Coshocton, OH, to points in the United States (except AK and HI), and *materials, equipment and supplies* used in the manufacture and distribution of the above named commodities (except commodities in bulk), in the reverse direction, under continuing contract(s) with Lancaster Colony Corp. (Hearing site: Columbus, OH, or Washington, DC.)

MC 145726 (Sub-11F), filed February 4, 1980. Applicant: G. P. THOMPSON ENTERPRISES, INC., P.O. Box 146, Midway, AL 36053. Representative: Terry P. Wilson, 420 So. Lawrence St., Montgomery, AL 36104. Transporting *meats, meat products, and meat byproducts and articles distributed by meat packing houses* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766, (except hides and commodities in bulk in tank vehicles), from those points in the United States in and east of MS, TN, KY, IL, and WI, to the facilities of Wayne Poultry, a division of Allied Mills, Inc., in Riveria Beach, FL. (Hearing site: Miami or Orlando, FL.)

MC 145997 (Sub-24F) filed February 21, 1980. Applicant: JEM EQUIPMENT, INC., P.O. Box 396, Alma, AR 72921. Representative: Don Garrison, P.O. Box 1065, Fayetteville, AR 72701. Transporting (1) *alcoholic liquors,* and (2) *materials, equipment and supplies* used in the manufacture and distribution of alcoholic liquors (except in bulk, in tank vehicles), between Ft. Smith, AR, Bardstown and Louisville, KY, New Orleans, LA, and Plainfield, IL, on the one hand, and, on the other, points in the U.S. (except AK and HI), restricted to the transportation of traffic originating at or destined to the facilities of Hiram Walker & Sons, Inc. (Hearing site: Peoria, IL, or Ft. Smith, AR.)

MC 146326 (Sub-11F), filed January 10, 1980. Applicant: JOHN ALGER, SR. d.b.a., ALGER TRANSPORTATION, 9811 Redman Ave., Omaha, NE 68134. Representative: Marshall D. Becker, STERN & BECKER, P.C., Suite 610, 7171 Mercy Rd., Omaha, NE 68106. Transporting *cable, wire and telephone equipment* (except commodities in bulk), from Omaha, NE to points in CA, NV and UT and empty reels on return. (Hearing site: Omaha, NE.)

MC 146386 (Sub-6F), filed February 1, 1980. Applicant: NATIONAL RETAIL TRANSPORTATION, INC., Building A, 10 East Oregon Ave., Philadelphia, PA 19148. Representative: Richard Rueda, 133 North 4th St., Philadelphia, PA 19106. Transporting *paper* (except newsprint), from (1) Wisconsin Rapids, Port Edwards, Neekoosa, and Appleton, WI., Chicago, IL, Kingsport, TN, Texarkana and Ashdown, AR, Bastrop, LA, and Chillicothe and West Carrollton, OH, to the facilities of Majestic Paper Corp., at New York, NY, and Farmingdale, NY, and to New York, NY and (2) West Carrollton, OH to Albany, NY. (Hearing site: Philadelphia, PA.)

MC 146516 (Sub-4F), filed February 4, 1980. Applicant: ALEXANDER TRUCKING, INC., 1210 Henry Clay Dr., New Orleans, LA 70118. Representative: Daniel O. Hands, Suite 200, 205 West Touhy Ave., Park Ridge, IL 60068. Transporting *nonalcoholic beverages* (except in bulk, in tank vehicles), from the facilities of Shasta Beverages at or near Houston, TX to points in AL, AR and MS, restricted to the transportation of traffic originating at the named origin. (Hearing site: Houston or Dallas, TX.)

MC 146636 (Sub-4F), filed January 10, 1980. Applicant: J. K. SMITH, P. SMITH, AND M. R. SMITH, d.b.a. SMITH TRUCKING, Route 1, Box 43, Round Lake, MN 56167. Representative: Michael J. Ogborn, P.O. Box 82028, Lincoln, NE 68501. Transporting *meats, meat products, meat by-products, and articles* distributed by meat packinghouses as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the facilities utilized by Armour & Company at Worthington, MN to points in CT, DE, IL, ME, MA, MD, NH, NJ, NY, PA, RI, VA, VT and WV. (Hearing site: Minneapolis, MN.)

MC 146886 (Sub-4F), filed February 4, 1980. Applicant: CONLAN TRUCK LINES, INC., 6160 South 116th St., Hales Corner, WI 53130. Representative: Richard A. Westley, 4506 Regent St., Suite 100, Madison, WI 53705. Transporting *laundry care products, home care products, beauty care toiletry products, stainless steel cookware, cutlery and food supplements* (except commodities in bulk) (1) from the facilities of Amway Corporation, at or near Ada, MI to points in ND and SD, (2) from Aberdeen, SD to points in ND and SD, (3) from the facilities of Amway Corporation, at or near Des Moines, IA to points in WI, MN and the Upper Peninsula of MI, (4) from Milwaukee, WI to points in WI and the Upper Peninsula of MI, and (5) from Minneapolis, MN to points in MN and WI. (Hearing site: Milwaukee, WI, or Grand Rapids, MI.)

MC 147227 (Sub-7F), filed February 1, 1980. Applicant: ATLANTIC MARKETING CARRIERS, INC., P.O. Box 493, Kingsburg, CA 93631. Representative: Eric Meierhoefer, Suite 423, 1511 K St., NW., Washington, DC 20005. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) from Clinton and Essex Counties, NY, to points in IN, OH, MI, MO, IL, WI, MN, CA, TX, FL, GA, KS, and CO, and (2) from points in MA and VT, to points in TX, FL, GA, KS, and CO. (Hearing site: Boston, MA.)

MC 147807 (Sub-9F), filed February 1, 1980. Applicant: TERESI TRUCKING, INC., P.O. Box 819, 900½ Victor Rd.,

Lodi, CA 95240. Representative: Eldon M. Johnson, 650 California St., Suite 2808, San Francisco, CA 94108. Transporting *iron and steel articles,* from the facilities of the Herrick Corporation, in Hayward, CA, to points in NV. (Hearing site: San Francisco or Oakland, CA.)

MC 147886 (Sub-6F), filed January 8, 1980. Applicant: A M & M INCORPORATED, P.O. Box 1627, Jackson, TN 38301. Representative: R. Connor Wiggins, Jr., Suite 909, 100 No. Main Bldg., Memphis, TN 38103. Transporting *foodstuffs,* (except unfrozen meat, unfrozen meat products, and unfrozen meat byproducts, and except commodities in bulk), (1) from the facilities of Vlasic Foods, Inc., at Greenville, MS, to points in KS, MO, TN, KY, GA, AL, AR, TX, OK, LA and Millsboro, DE, (2) from the facilities of Vlasic Foods, Inc., at Millsboro, DE, to points in NC, SC, VA, WV, PA, NJ, NY, MD, and DE, and (3) between the facilities of Vlasic Foods, Inc., at Bridgeport, Memphis, and Imlay City, MI, on the one hand, and, on the other, Greenville, MS, and Millsboro, DE. (Hearing site: Memphis, TN.)

MC 148506 (Sub-2F), filed January 8, 1980. Applicant: ROAD & RAIL COMPANY, 5565 Chauncey Dr., Belmont, MI 49306. Representative: P. C. Martin, 5565 Chauncey Dr., Belmont, MI 49036. Transporting *carpet and floor covering* (except commodities in bulk) from points in GA, SC, NC, and VA, to points in IN, MI, and OH. (Hearing site: Lansing, MI.)

MC 148837 (Sub-1F), filed February 1, 1980. Applicant: DONALD C. PHILBRICK, d.b.a. PORTLAND AIR FREIGHT, 1016 Westbrook St., Portland, ME 04102. Representative: Donald C. Philbrick (same address as applicant). Transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), between Portland, South Portland, and Westbrook, ME, and the terminals of air carriers near Logan Airport, Boston, MA, restricted to the transportation of traffic having a prior or subsequent movement by air. (Hearing site: Portland, ME, or Boston, MA.)

MC 149047 (Sub-2F), filed February 4, 1980. Applicant: BENNY MAGNESS, d.b.a. MAGNESS OIL COMPANY, P.O. Box 146, Cotter, AR 72626. Representative: James M. Duckett, 927 Pyramid Life Bldg., Little Rock, AR 72201. Transporting *gasoline, diesel fuels, aviation fuels and kerosene,* (in bulk, in tank vehicles), from Lawrence, Green, and Jasper Counties, MO, to Carroll, Boone, Marion, Baxter, Izard, Searcy, Independence and Stone Counties, AR. (Hearing site: Little Rock, AR.)

MC 149106F, filed February 17, 1980. Applicant: BLUE JAY BUS, INC., 100 Edison Ave., Mt. Vernon, NY 10550. Representative: Sidney J. Leshin, 575 Madison Ave., New York, NY 10022. Transporting *passengers and their baggage* in the same vehicle with passengers, in special operations, beginning and ending in Co-Op City and City Island, in Bronx County, NY, and extending to points in the United States (except AK, NY, AL, and HI). (Hearing site: Bronx or New York, NY.)

MC 149107F, filed February 14, 1980. Applicant: CONVEY, INC., 409 South Vista, Addison, IL 60101. Representative: Albert A. Andrin, 180 North LaSalle Street, Chicago, IL 60601. Transporting *general commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), from the facilities of Continental Warehouse, Inc. at Addison, IL to Milwaukee, Appleton, Fond du Lac and Racine, WI. (Hearing site: Chicago, IL.)

MC 149287F, filed January 8, 1980. Applicant: CARL E. TURNER AND LEROY E. TURNER d.b.a. TURNER BROS., a partnership, 100 Tower Rd., Cumming, GA 30130. Representative: Theodore M. Forbes, Jr., 4000 First National Bank Tower, Atlanta, GA 30303. Contract carrier, transporting *materials for the production of poultry rearing equipment, and poultry processing equipment,* between Alpharetta, GA, on the one hand, and, on the other, points in the United States (except AK and HI), under a continuing contract(s) with U.S. Industries, Inc.-Agri-Business Company. (Hearing site: Atlanta, GA.)

MC 149336F, filed February 4, 1980. Applicant: SOUTH TEXAS EXPRESS, INC., 351 Simon St., San Antonio, TX 78204. Representative: Phillip Robison, P.O. Box 2207, Austin, TX 78768. Regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment), (1) between San Antonio, TX and Smiley, TX over U.S. Hwy 87, serving all intermediate points, (2) between Kennedy, TX and Beeville, TX over U.S. Hwy 181, serving all intermediate points, (3) between Karnes City, TX and Nixon, TX, serving all intermediate points: from Karnes City over TX Hwy 123 to its junction with TX Hwy 80, then over TX Hwy 80 to Nixon, and return over the same route, (4) between Floresville, TX and junction of TX Hwy 97 and U.S. Hwy 87 over TX Hwy 97, serving all intermediate points, (5) between Beeville, TX and junction of TX Hwy 9 and U.S. Hwy 59 over U.S. Hwy 59, serving all intermediate points, (6) between Floresville, TX and the junction of TX Hwy 97 and TX Farm Rd. 478 over TX Hwy 97, serving all intermediate points, and (7) between Hobbson, TX and Helena, TX over TX Farm Rd. 81, serving all intermediate points: (Hearing site: San Antonio, TX.)

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Decided: March 14, 1980.

By the Commission, Review Board Number 3, Members Parker, Fortier and Hill.

MC 409 (Sub-77F), filed December 27, 1979. Applicant: SCHROETLIN TANK LINE, INC., P.O. Box 511, Sutton, NE 68979. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. Transporting *propane,* in bulk, in tank vehicles, from points in McPherson and Clay Counties, KS, Fillmore County, NE, and Clay County, MO, to points in IA, MN, NE, ND and SD.

Note.—Any certificate issued in this proceeding shall be limited to 5 years from its date of issuance.

MC 908 (Sub-9F), filed December 14, 1979. Applicant: CONSOLIDATED CARTAGE COMPANY, INC., P.O. Box 171, Argo, IL 60501. Representative: Eugene L. Cohn, One North La Salle St., Chicago, IL 60602. Transporting *containers and container ends and materials, equipment and supplies* used in the manufacture and distribution of containers, between points in the Chicago, IL, Commerical Zone on the one hand, and, on the other, Louisville, KY. (Hearing site: Chicago, IL.)

MC 7698 (Sub-16F), filed December 14, 1979. Applicant: FOWLER & WILLIAMS, INC., 1300 Meylert Ave., Scranton, PA 18501. Representative: Michael R. Werner, 167 Fairfield Road, P.O. Box 1409, Fairfield, NJ 07006. Over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment); between Scranton and Pittsburgh, PA, serving all intermediate and off route points in Allegheny, Beaver, Bradford, Butler, Carbon, Columbia, Crawford, Erie, Lackawanna, Lehigh, Mercer, Northampton, Pike, Schuykill, Sullivan, Susquehanna, Venango, Wayne, Wyoming, Lawrence, Luzerne, Monroe, Washington and Westmoreland Counties, PA; (1) from Scranton over

Interstate Hwy 81 to junction Interstate Hwy 76, then over Interstate Hwy 76 to Pittsburgh, and return over the same route, (2) from Scranton over Interstate Hwy 81 to junction Interstate Hwy 80, then over Interstate Hwy 80, to junction Interstate Hwy 79, then over Interstate Hwy 79 to Pittsburgh, and return over the same route, (3) from Scranton to junction Interstate Hwy 79 as in (2) above, then over Interstate Hwy 79 to junction Interstate Hwy 279, then over Interstate Hwy 279 to Pittsburgh, and return over the same route, (4) from Scranton, to junction Interstate Hwy 80 as in (2) above, then over Interstate Hwy 80 to junction U.S. Hwy 220, then over U.S. Hwy 220 to junction Interstate Hwy 76, then over Interstate Hwy 76 to Pittsburgh, and return over the same route, (5) from Scranton to junction Interstate Hwy 80 as in (2) above, then over Interstate Hwy 80 to junction PA Hwy 28, then over PA Hwy 28 to Pittsburgh, and return over the same route. (Hearing site: Scranton, PA.)

MC 25869 (Sub-169F), filed December 26, 1979. Applicant: NOLTE BROS. TRUCK LINE, INC., 6217 Gilmore Ave., P.O. Box 7184, Omaha, NE 68107. Representative: Irwin Schwartz (same address as applicant). Transporting *confectionery* from Chicago, IL, to points in AR, CO, IA, KS, MO, NM, and TX, restricted to the transportation of traffic orignating at the facilities of E. J. Brach & Sons at Chicago, IL. (Hearing site: Chicago, IL.)

MC 31389 (Sub-290F), filed December 16, 1979. Applicant: McLEAN TRUCKING COMPANY, 1920 W. First St., Winston-Salem, NC 27104 Representative: David F. Eshelman, P.O. Box 213, Winston-Salem, NC 27102. To operate as a *common carrier,* by motor vehicle, over regular routes, transporting *general commodities* (except those of unusual value, classes A an B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, (1) between Clare, MI, and Bay City, MI, over Interstate Hwy 10 (2) between Midland, MI and Toledo, OH; from Midland over MI Hwy 47 to junction of MI Hwy 46, then over MI Hwy 20, then over U.S. Hwy 20 to Toledo, and return over the same route, (3) between Bay City, MI and Chicago, IL; from Bay City over Interstate Hwy 10 to junction of Interstate Hwy 69 near Flint, MI, then over Interstate Hwy 69 to junction of Interstate Hwy 94 west of Battle Creek, MI, then over Interstate Hwy 94 to Chicago, IL, and return over the same route; serving in (1), (2) and (3) points in Bay, Genesee, Midland, Oakland, Saginaw and Shiawassee Counties, MI, as intermediate and off-route points in connection with the above described routes, and serving Clare and Lansing, MI, Toledo, OH, and the junction of Interstate Hwys 69 and 94 for purposes of joinder only, in conjunction with applicant's presently authorized regular route operations.

MC 31389 (Sub-291F), filed December 17, 1979. Applicant: McLEAN TRUCKING COMPANY, 1920 W. First St., Winston-Salem, NC 27104. Representative: David F. Eshelman, P.O. Box 213, Winston-Salem, NC 27102. To operate as a *common carrier,* by motor vehicle, over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between Gary, IN and Dubuque, IA, over U.S. Hwy 20, (2) between Beloit, WI and Dixon, IL; from Beloit over WI Hwy 2 to IL State Line, then over IL Hwy 2 to Dixon, and return over the same route; (3) between Freeport, IL and Dixon, IL, over IL Hwy 26, (4) between Rockford, IL and Rochelle, IL, over U.S. Hwy 51, serving in (1), (2), (3) and (4) Belvidere, Rockford and Freeport, IL, as intermediate and off-route points and serving Chicago, IL, Beloit, WI, Dubuque, IA, and the junction of U.S. Hwy 61 and WI Hwy 11 located approximately 5 miles east of Dubuque, IA, for purpose of joinder only in connection with the above described routes, in conjunction with applicant's presently authorized regular route operations.

MC 33298 (Sub-3F), filed December 28, 1979. Applicant: SCHOCK TRANSFER & WAREHOUSE CO., INC., 45 Osage Ave., Kansas City, KS 66618. Representative: Clyde N. Christey, KS Credit Union Building, 1010 Tyler, Suite 110L, Topeka, KS 66612. Transporting (1) *containers and container ends and closures,* from points in the Kansas City, KS, Kansas City, MO, commercial zone, to points in NE, IA, IL, MO, KS, CO, AR, OK, MS, MN, WI, and TN, and (2) *materials, equipment and supplies* used in the manufacture and distribution of containers, container ends and closures (except commodities in bulk), from points in NE, IA, IL, MO, KS, CO, AR, OK, MS, MN, WI and TN to the facilities of Reynolds Metals Company, Can Division, in the Kansas City, KS–Kansas City, MO, Commercial zone. (Hearing site: Kansas City, MO.)

MC 48958 (Sub-184F), filed June 22, 1979, previously noticed in **Federal Register** issue of January 15, 1980. Applicant: ILLINOIS-CALIFORNIA EXPRESS, INC., 510 East 51st Avenue, P.O. Box 16404, Denver, CO 80216. Representative: Lee E. Lucero (same address as applicant). Transporting *meats, meat products and meat byproducts, and articles distributed by meat-packing houses,* as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the facilities of Oscar Mayer & Co., Inc., at or near Des Moines and Perry, IA, to points in AZ, CA, CO, NM, NV, OK, TX, and UT. (Hearing site: Chicago, IL.)

Note.—This republication changes the destination state of MN to NM.

MC 49368 (Sub-113F), filed January 8, 1980. Applicant: COMPLETE AUTO TRANSIT, INC., East 4111 Andover Road, Bloomfield Hills, MI 48013. Representative: Eugene C. Ewald, Attorney, 100 West Long Lake Road, Suite 102, Bloomfield Hills, MI 48013. *Contract carrier,* transporting (1) *motor vehicles,* in initial movements, in truckaway and driveaway service, from the facilities of General Motors Corporation in Montgomery County, OH, to points in the United States (except AK and HI) and (2) *motor vehicles,* in secondary movements, in truckaway and driveaway service, between points in Montgomery County, OH, on the one hand, and, on the other, points in the United States (except AK and HI), under continuing contract(s) with General Motors Corporation. (Hearing site: Detroit, MI.)

MC 49368 (Sub-114F), filed January 25, 1980. Applicant: COMPLETE AUTO TRANSIT, INC., East 4111 Andover Road, Bloomfield Hills, MI 48013. Representative: Eugene C. Ewald, Attorney, 100 West Long Lake Road, Suite 102, Bloomfield Hills, MI 48013. *Contract carrier,* transporting *motor vehicles,* in initial movements, in truckaway service, from the facilities of General Motors Corporation at Wilmington, DE, to points in IA, IL, KY, MN, MO, WI, and WV, under continuing contract(s) with General Motors Corporation. (Hearing site: Detroit, MI.)

MC 49368 (Sub-115F), filed January 25, 1980. Applicant: COMPLETE AUTO TRANSIT, INC., East 4111 Andover Road, Bloomfield Hills, MI 48013. Representative: Eugene C. Ewald, Attorney, 100 West Long Lake Road, Suite 102, Bloomfield Hills, MI 48013. *Contract carrier,* transporting *motor vehicles* (except trailers), in initial movements, in truckaway and driveaway service, from the facilities of General Motors Truck & Coach Plant at Pontiac, MI, to points in the United States (except AK and HI), under

continuing contract(s) with General Motors Corporation. (Hearing site: Detroit, MI or Washington, DC.)

MC 57778 (Sub-33F), filed December 27, 1979. Applicant: MICHIGAN REFRIGERATED TRUCKING SERVICE, INC., 6134 West Jefferson Avenue, Detroit, MI 48909. Representative: William B. Elmer, 21635 East Nine Mile Road, St. Clair Shores, MI 48080. Transporting *foodstuffs*, from Warren, MI, to points in FL, GA, IL, IN, MA, MN, MO, NJ, OH, PA, TX, and WI, and *materials and supplies* used in the manufacture and distribution *of foodstuffs*, in the reverse direction.

MC 72069 (Sub-28F), filed December 11, 1979. Applicant: BLUE HEN LINES, INC., P.O. Box 280, Milford, DE 19963. Representative: Chester A. Zyblut, 366 Executive Building, 1030 Fifteenth Street, N.W., Washington, D.C. 20005. Transporting (a) *canned goods*, from Vineland, NJ, to points in FL, GA, NC, SC, VA, WV, MI, AL, LA, KY, IL, TN, OK, AR, KS, MO, TX, CO, NM, CA, AZ, OH, IN, WI, MN, NH, and ME; and (b) *bread crumbs*, From Chicago, IL, and Detroit, MI to Vineland, NJ. (Hearing site: Washington, D.C.)

MC 96839 (Sub-3F), filed December 14, 1979. Applicant: PALMER TRUCKING CO., INC., 239 Park Street, Palmer, MA 01069. Representative: James M. Burns, 1383 Main Street, Suite 413, Springfield, MA 01103. Transporting (1) *sanitary tampons and applicators* and (2) *equipment, materials and supplies* used in the manufacture, sale and distribution of the commodities in (1) above, between points in CT, MA, ME, NH, NY, RI and VT, restricted to the transportation of traffic originating at or destined to the facilities of Tampax Incorporated. (Hearing site: Springfield or Boston, MA.)

MC 104149 (Sub-209F), filed August 3, 1979, published in the **Federal Register** issue February 14, 1980. Applicant: OSBORNE TRUCK LINE, INC., 516 North 31st St., Birmingham, AL 35202. Representative: William P. Jackson, Jr., 3426 N. Washington Blvd., P.O. Box 1240, Arlington, VA 22210. Transporting *iron and steel articles*, from points in IN, IL, OH, PA, and WV, to points in AL, FL, GA, LA, MS, and TN. (Hearing site: Birmingham, AL.) This republication adds TN to destination territory.

MC 107818 (Sub-102F), filed November 5, 1979. Published in **Federal Register** issue March 11, 1980. Applicant: GREENSTEIN TRUCKING COMPANY, 280 N.W. 12th Ave., Pompano Beach, FL 33061. Representative: Martin Sack, Jr., 1754 Gulf Life Tower, Jacksonville, FL 32207. Transporting *tires and articles* distributed by wholesale and retail tire distributors, from Frazer, Conshohocken, and Royersford PA, Camden, NJ, Chicago, IL, Washington, DC, Akron, Findley and Rossford, OH, and Gadsden and Birmingham, AL, to points in FL. (Hearing site: Ft. Lauderdale, FL.) This republication broadens territory description.

MC 108119 (Sub-218F), filed December 18, 1979. Applicant: E. L. MURPHY TRUCKING COMPANY, P.O. Box 43010, St. Paul, MN 55164. Representative: Andrew R. Clark, 1000 First National Bank Bldg., Minneapolis, MN 55402. Transporting (1)(a) *baling machinery* and (b) *parts, attachments and accessories* for baling machinery, from Jacksonville, FL, to points in the United States (except AK and HI). (2) *materials, equipment and supplies* used in the manufacture of the commodities named in (1) above, in the reverse direction, restricted to the transportation of traffic originating at or destined to the facilities of International Baler Corporation at Jacksonville, FL. (Hearing site: Jacksonville, FL.)

MC 108119 (Sub-221F), filed December 17, 1979. Applicant: E. L. MURPHY TRUCKING COMPANY, P.O. Box 43010, St. Paul, MN 55164. Representative: Andrew R. Clark, 1000 First National Bank Building, Minneapolis, MN 55402. Transporting: *(1) pipeline equipment, and (2) materials and supplies used in the installation and repair of pipeline equipment* from points in the United States (except AK and HI) to points in OK, MO, KS, NE, IA, SD, ND, MN, WI, IL, and IN, restricted to traffic destined to the facilities of Williams Pipe Line Company. (Hearing site: Tulsa or Oklahoma City, OK.)

MC 109689 (Sub-366F), filed December 14, 1979. Applicant: W. S. HATCH, CO., P.O. Box 1825, Salt Lake City, UT 84110. Representative: Mark K. Boyle, Suite 400, 10 Broadway Bldg., Salt Lake City, UT 84101. Transporting *crude oil* from Trap Springs, NV, to Fruita, CO.

MC 110288 (Sub-14F), filed December 17, 1979. Applicant: HARRY HENERY, INC., 3517 W. Washington Street, Indianapolis, IN 46241. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. Transporting *plastic pipe, plastic pipe accessories, and materials and supplies used in the manufacture and distribution of plastic pipe*, between Fairfield, IA, and Franklin Park, IL, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Chicago, IL.)

MC 113499 (Sub-8F), filed August 6, 1979, published in **Federal Register**, February 20, 1980. Applicant: EDWARD M. RUDE CARRIER CORP., R.F.D. No. 1, Falling Waters, WV 25419. Representative: Francis J. Ortman, 7101 Wisconsin Avenue, Suite 605, Washington, D.C. 20014. Transporting: (1) *glass*, from Jerry Run (Taylor County), WV to Cincinnati, OH. (2) *glass and glassware*, from Jerry Run (Taylor county), WV to Baltimore, MD and Washington, D.C. (3) *glass and glass products*, from Jerry Run (Taylor County), WV to points in PA (except Philadelphia and points within 25 miles of Philadelphia, and except Pittsburgh and points within 20 miles of Pittsburgh and except points on U.S. Highway 19 south of the described Pittsburgh area), and points in MD (except Baltimore). This republication corrects a typographical error in part (3).

MC 113658 (Sub-23F), filed December 18, 1979. Applicant: SCOTT TRUCK LINE, INC., 5280 Newport St., Commerce City, CO 80022. Representative: Richard J. Loose, P.O. Box 16346, Denver, CO 80216. Transporting *meat and packing house products* from New Haven, CT, Camden, Pt. Newark, and Pt. Elizabeth, NJ, Philadelphia, PA, Wilmington, DE, New York, NY, and Norfolk, VA, to Chicago, IL, and Kenosha, WI.

MC 113658 (Sub-24F), filed December 18, 1979. Applicant: SCOTT TRUCK LINE, INC., 5280 Newport St., Commerce City, CO 80022. Representative: Richard J. Loose, P.O. Box 16346, Denver, CO 80216. Transporting *margarine, shortening and peanut butter* from the facilities of Sunnyland Refining Company at or near Birmingham, AL, to points in CO, CT, IA, IL, IN, KS, MA, MO, NE, NJ, NY, OH, PA and RI. (Hearing site: Birmingham, AL, Denver, CO, or Washington, DC.)

MC 113658 (Sub-25F), filed December 26, 1979. Applicant: SCOTT TRUCK LINE, INC., 5280 Newport St., Commerce City, CO 80022. Representative: Richard J. Loose, P.O. Box 16346, Denver, CO 80216. Transporting *meat and packinghouse products* from Kenosha, WI, to Des Moines, IA, Omaha, NE, and Denver, CO. (Hearing site: Milwaukee, WI, Denver, CO, or Chicago, IL.)

MC 113658 (Sub-26F), filed December 26, 1979. Applicant: SCOTT TRUCK LINE, INC., 5280 Newport St., Commerce City, CO 80022. Representative: Richard J. Loose, P.O. Box 16346, Denver, CO 80216. Transporting *meats, meat products, meat by-products, and articles distributed by meat-packing houses*, as described in Section A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the facilities of Minden Beef Company at or near Minden, NE, to points in CT, NJ, NY, and

PA. (Hearing site: Denver, CO or Washington, DC.)

MC 113678 (Sub-860F), filed December 18, 1979. Applicant: CURTIS, INC., 4810 Pontiac St., Commerce City, CO 80022. Representative: Roger M. Shaner (same address as applicant). Transporting *sugar,* and products used in the manufacture of sugar (except in bulk) from Goodland, KS, Billings, MT, and Bayard, Gering, Mitchell, and Scottsbluff, NE, to points in the United States in and west of MI, OH, KY, MO, and LA (except AK & HI). (Hearing site: Denver, CO.)

MC 113908 (Sub-495F), filed December 14, 1979. Applicant: ERICKSON TRANSPORT CORP., P.O. Box 10068 G.S., 2255 N. Packer Rd., Springfield, MO 65804. Representative: Jim G. Erickson (same address as applicant). Transporting *vinegar, vinegar stock, vinegar stock concentrates, acetic acid, glacial ecetic acid, cider, cider stock fruit juice and fruit juice concentrates,* in bulk, between points in the United States, (except AK and HI). (Hearing site: Kansas City, MO or Washington, DC.)

MC 114569 (Sub-359F), filed December 14, 1979. Applicant: SHAFFER TRUCKING INC., P.O. Box 418, New Kingstown, PA 17072. Representative: N. L. Cummins (same address as applicant.) Transporting *foodstuffs* (except in bulk). from Menomonie, Cameron, Vesper, Wisconsin Rapids and Eau Claire, WI, to points in AZ, CA, CO, KS, MO, NE, OK, OR, TX, and WA. (Hearing site: Madison, WI or Washington, DC.)

MC 114569 (Sub-360F), filed December 14, 1979. Applicant: SHAFFER TRUCKING INC., P.O. Box 418, New Kingstown, PA 17072. Representative: N. L. Cummins (same address as applicant.) Transporting *meats, meat products, meat by-products and articles distributed by meat-packing houses* as described in Section A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the facilities of Ed Miniat at or near Chicago, IL, to points in DC, KY, MD, MA, NJ, NY, PA, and VA. (Hearing site: Chicago, IL or Washington, DC.)

MC 114569 (Sub-361F), filed December 14, 1979. Applicant: SHAFFER TRUCKING INC., P.O. Box 418, New Kingstown, PA 17072. Representative: N. L. Cummins (same address as applicant.) Transporting *foodstuffs* (except in bulk), from the facilities of M&M/Mars, Snack-master Division at Albany, GA, to points in CA, CO, IN, IL, MD, MN, MO, NJ, OH, and TN. (Hearing site: Atlanta, GA or Washington, DC.)

MC 114569 (Sub-365F), filed December 27, 1979. Applicant: SHAFFER TRUCKING INC., P.O. Box 418, New Kingstown, PA 17072. Representative: N. L. Cummins (same address as applicant.) Transporting *charcoal and charcoal briquettes* (1) from Kenbridge, VA, to points in NY, NJ, PA, MD, and DC; and (2) from Salem, MO, to points in IL, IN, IA, KY, MI, OH, PA and WI. (Hearing site: St. Louis, MO or Washington, DC.)

MC 115468 (Sub-36F), filed December 27, 1979. Applicant: LOCK TRUCKING, INC., P.O. Box 278, Wheatland, WY 82201. Representative: Ward A. White, P.O. Box 568, Cheyenne, WY 82001. Transporting (1) *limestone* from points in Larimer County, CO, to points in Albany, Carbon, Goshen and Platte Counties, WY, and (2) *lime and limestone* from points in Goshen County, WY, to points in the United States in and west of MI, IN, IL, TN, AR, and LA (except AK and HI). (Hearing site: Cheyenne, WY or Denver, CO.)

MC 115859 (Sub-7F), filed January 25, 1980. Applicant: P.C.M. TRUCKING, INC., Kernsville Road, P.O. Box 129, Orefield, PA 18069. Representative: Christian V. Graf, 407 North Front Street, Harrisburg, PA 17101. *Contract carrier,* transporting *dry fertilizer, dry fertilizer material, and dry pesticides,* (1) between the facilities of Lebanon Chemical Corporation at or near Lebanon and Allentown, PA, Baltimore, MD, and Dayton, NJ, and (2) between the facilities of Lebanon Chemical Corporation at or near Lebanon and Allentown, PA, Baltimore, MD, and Dayton, NJ, on the one hand, and, on the other, points in ME, NH, VT, MA, CT, RI, NY, PA, NJ, DE, MD, VA, WV, OH, KY, IN, IL, MI, WI, TN, NC, SC, GA, FL, AL, MS, and DC, under continuing contract(s) with Lebanon Chemical Corporation, of Lebanon, PA. (Hearing site: Washington, DC or Harrisburg, PA.)

MC 116628 (Sub-28F), filed January 10, 1980. Applicant: SUBURBAN TRANSFER SERVICE, INC., P.O. Box 168, Rutherford, NJ 07070. Representative: Thomas F.X. Foley, State Highway 34, Colts Neck, NJ 07722. *Contract carrier,* transporting *bedding equipment, and materials and supplies* used in the manufacture of bedding equipment, between Martinsburg, WV, and Newark, NJ, on the one hand, and, on the other, points in DE, MD, NJ, NY, PA, VA, WV, and DC, under continuing contract(s) with Shifman Bros. of Newark, NJ, and Shifman Bros. of West Virginia, of Martinsburg, WV. (Hearing site: Newark, NJ, or New York, NY.)

MC 117519 (Sub-7F), filed January 15, 1980. Applicant: TRANSPORTATION, INC., P.O. Box 362, Ottawa, KS 66067. Representative: Clyde N. Christey, Kansas Credit Union Bldg., 1010 Tyler, Suite 110L, Topeka, KS 66612. *Contract carrier,* transporting *expanded shale aggragate,* in bulk, from the facilities of Buildex, Inc., at or near Ottawa and Marquette, KS, to Cheyenne, WY, under continuing contract(s) with Buildex, Inc. (Hearing site: Kansas City, MO.)

MC 119489 (Sub-63F), filed December 27, 1979. Applicant: CENTRAL TRANSPORTATION CO., INC., 2500 N. 13th St., P.O. Box 249, Norfolk, NE 68701. Representative: Donald L. Stern, Suite 610, 7171 Mercy Road, Omaha, NE 68106. Transporting *petroleum products,* in bulk, in tank vehicles, between points in IA, KS, NE, SD, and points in Clay, Jackson and Platte Counties in MO. (Hearing site: Omaha, NE.)

MC 119789 (Sub-657F), filed December 27, 1979. Applicant: CARAVAN REFRIGERATED CARGO, INC., P.O. Box 226188, Dallas, TX 75266. Representative: James K. Newbold, Jr., (same address as applicant). Transporting *foodstuffs,* not frozen, from the facilities of American Beauty Macaroni Co. at Fresno, CA, to points in CO, KS, MO, and TX. (Hearing site: Minneapolis, MN.)

MC 121568 (Sub-24F), filed December 14, 1979. Applicant: HUMBOLDT EXPRESS, INC., 345 Hill Ave., Nashville, TN 37211. Representative: James G. Caldwell (same address as applicant). Transporting *books, magazines, and printed matter and equipment, materials, and supplies* used in the manufacture and distribution of the foregoing commodities (except in bulk) between the facilities of Baird Ward at or near Nashville, TN, and points in TX. (Hearing site: Nashville, TN.)

MC 124328 (Sub-134F), filed January 16, 1980. Applicant: BRINK'S, INCORPORATED, Thorndal Circle, Darien, CT 06820. Representative: Richard H. Streeter, 1729 H Street, N.W., Washington, DC 20006. Contract carrier, transporting *currency, securities, negotiable and non-negotiable instruments and other items of unusual value,* between (1) San Francisco, CA, on the one hand, and, on the other, Sacramento, CA, (2) Miami, FL, on the one hand, and, on the other, Palm Beach, FL, (3) Cincinnati, OH, on the one hand, and, on the other, Dayton and Columbus, OH, and (4) Cleveland, OH, on the one hand, and, on the other, Toledo, OH, under continuing contract(s) with banks, banking and financial institutions and brokerage houses. (Hearing site: Washington, DC.)

MC 125689 (Sub-12F), filed December 14, 1979. Applicant: BEATTYVILLE TRANSPORT, INC., Box 357, Catlettsburg, KY 41129. Representative: Fred H. Daly, Suite 475, 2550 M Street, N.W., Washington, DC 20037. Transporting *petroleum products,* in bulk, in tank vehicles, from the facilities of Gulf Oil Corporation at or near Huntington, WV, to points in Bath, Boyd, Carter, Elliott, Fleming, Floyd, Greenup, Johnson, Lawrence, Lewis, Magoffin, Martin, Mason, Morgan, Pike and Rowan Counties, KY. (Hearing site: Charleston, WV.)

MC 126118 (Sub-96F), filed September 15, 1978, previously noticed in FR issue of October 26, 1978. Applicant: CRETE CARRIER CORPORATION, P.O. Box 81228, Lincoln, NE 68501. Representative: Duane W. Acklie (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *clay and clay products,* in containers, from the facilities of Waverly Mineral Products Company, at or near Ochlocknee and Meigs, GA, to points in IA, IL, IN, KS, KY, MI, MN, MO, NE, OH, PA, and WI, restricted to the transportation of traffic originating at the named origins. (Hearing site: Philadelphia, PA, or Lincoln, NE.)

Note.—This republication adds Ochlocknee to the territory description. Dual operation may be involved.

MC 126118 (Sub-208F), filed December 26, 1979. Applicant: CRETE CARRIER CORPORATION, P.O. Box 81228, Lincoln, NE 68501. Representative: David R. Parker (same address as applicant). Transporting *paper and paper products,* from Erie and Lock Haven, PA, and Oswego, NY, to points in AZ, CA, OR and WA. (Hearing site: Harrisburg, PA or Lincoln, NE.)

MC 128338 (Sub-6F), filed January 25, 1980. Applicant: RINGER TRUCKING, INC., Route No. 1, Box 54, Markleysburg, PA 15459. Representative: Arthur J. Diskin, 806 Frick Bldg., Pittsburgh, PA 15219. *Contract carrier,* transporting *gasoline, kerosene, heating, and fuel oil, diesel motor fuel, motor oil, asphalt, and asphaltic road materials,* from points in Allegheny, Beaver, Washington, Westmoreland, Venango, McKean, Erie, Warren, Bedford, Blair, Cambria, and Philadelphia Counties, PA, Congo, WV, Cleveland, Cincinnati, and East Liverpool, OH, Baltimore, MD, and DC to points in PA, OH, WV, and MD, under continuing contract(s) with Reserve Petroleum Company of Pittsburgh, PA. (Hearing site: Pittsburgh, PA or Washington, DC.)

MC 133478 (Sub-22F), filed January 21, 1980. Applicant: DG TRANSPORT, INC., 11655 SW Pacific Highway, P.O. Box 25448, Portland, OR 97223. Representative: Nick I. Goyak, One Southwest Columbia, Suite 555, Portland, OR 97258. Contract carrier transporting *metal ingots, metal shot* and *foundry supplies* (1) from points in the United States (except AK and HI) to points in OR and WA, and (2) from points in OR and WA to points in CA, under continuing contract(s) with Western Industrial Supply Company. (Hearing site: Portland, OR or Seattle, WA.)

MC 134978 (Sub-21F), filed December 17, 1979. Applicant: C. P. BELUE d.b.a. BELUE'S TRUCKING, Route 6, Spartanburg, SC 29303. Representative: Mitchell King, Jr., P.O. Box 1628, Greenville, SC 29602. Transporting *coal,* (1) from points in KY, TN, and VA to points in Spartanburg and York Counties, SC; and (2) between points in Spartanburg County, SC. (Hearing site: Columbia, SC or Charlotte, NC.)

MC 135539 (Sub-20F), filed January 8, 1980. Applicant: FARM SERVICE & SUPPLIES, INC., P.O. Box 5351, Evansville, IN 47415. Representative: Robert J. Gill, First Commercial Bank Bldg., 410 Cortez Road West, Suite 406, Bradenton, FL 33507. *Contract carrier,* transporting (1) *road construction equipment, and* (2) *parts, equipment, materials, accessories, and supplies* used in the manufacture or operation of road construction equipment, (except commodities in bulk), between the facilities of Blaw-Knox Construction Equipment, Inc., at or near Mattoon, IL, and King of Prussia, PA on the one hand, and, on the other, points in the United States (except AK and HI) under continuing contract(s) with Blaw-Knox Construction Equipment, Inc. (Hearing site: Chicago or Springfield, IL.)

MC 136738 (Sub-3F), filed January 18, 1980. Applicant: DEAKAL CARTING CORP., 292 Marlin Street, Dix Hills, NY 11746. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. *Contract carrier,* transporting *record jackets, and paper and paper products* used in the manufacture of record jackets, from LaGrange, GA, to Pitman, NJ, Farmingdale and Gloversville, NY, Winchester, VA, Scranton and Allentown, PA, Richmond, Indianapolis and Terre Haute, IN, Pickneyville and Jacksonville, IL, and Memphis and Nashville, TN, under continuing contract(s) with Shorewood Packaging Corp. and SPC Company. (Hearing site: Indianapolis, IN or Washington, DC.)

MC 136898 (Sub-7F), filed January 14, 1979. Applicant: BAKER TRANSPORT, INC., P.O. Box 668, Hartselle, AL 35640. Representative: Robert E. Tate, P.O. Box 517, Evergreen, AL 36401. *Contract carrier,* transporting (1) *paint and coatings* from North Kansas City, MO, and Baltimore, MD, to points in the United States in and east of ND, SD, NE, KS, OK and TX; and (2) *materials and supplies* used in the manufacture and distribution of paint and coatings, in the reverse direction, under continuing contract(s) with TNEMEC Incorporated. (Hearing site: Kansas City, MO or Atlanta, GA.)

MC 136919 (Sub-5F), filed January 7, 1980. Applicant: B. A. MILLER & SONS TRUCKING, INC., State Route 109, Liberty Center, OH 43532. Representative: A. Charles Tell, 100 East Broad Street, Columbus, OH 43215. *Contract carrier,* transporting (1) *food, food products, and foodstuffs,* from the facilities of The German Village Products, Inc., Division of Campbell Soup Company at or near Wauseon, OH, to points in IL, IN, KY, MI, MN, MO, NY, PA, TN, WV, and WI, and (2) *equipment, ingredients, materials and supplies* used in the production of food products (except commodities in bulk), in the reverse direction, under continuing contract(s) with German Village Products, Inc. (Hearing site: Washington, DC.)

MC 140389 (Sub-77F), filed December 17, 1979. Applicant: OSBORN TRANSPORTATION, INC., P.O. Box 1830, Gadsden, AL 35902. Representative: Clayton R. Byrd, P.O. Box 304, Conley, GA 30027. Transporting *foodstuffs* (except in bulk), from the facilities of Beatrice Foods Company at or near Archbold and Napoleon, OH, to points in AL, FL, GA, MS, NC, SC, and TN, restricted to traffic moving from the above-named origins. (Hearing site: Columbus, OH.)

MC 140729 (Sub-6F), filed January 14, 1980. Applicant: RUSS EDIGER TRUCKING, INC., 5001 W. 40th Street, Sioux Falls, SD 57105. Representative: Claude Stewart, P.O. Box 480, Sioux Falls, SD 57101. *Contract carrier* transporting *dairy products* as described in Section B of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and *supplies* used in the production of dairy products, between Rapid City, SD, on the one hand, and, on the other, points in MN south of U.S. Hwy 12 and Sioux Falls, SD, under continuing contract(s) with Brown Swiss Milk Co., of Rapid City, SD. (Hearing site: Sioux Falls, SD, or Sioux City, IA.)

MC 140779 (Sub-3F), filed January 29, 1980. Applicant: TRANSIT SERVICING, INC., 8121–C East 34 Mile Road,

Cadillac, MI 49601. Representative: Burton A. Hines, Sr., 121 N. Mitchell Street, Cadillac, MI 49601. *Contract carrier,* transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between the facilities of Transit Servicing, Inc., at Cadillac, MI, on the one hand, and, on the other, points in Gratiot County, MI, and in the upper peninsula of MI, continuing contract(s) with K Mart Stores. (Hearing site: Chicago, IL.)

MC 142548 (Sub-7F), filed January 22, 1980. Applicant: STALEY EXPRESS, INC., 201 N. Brush College Rd., Decatur, IL 62526. Representative: Fritz R. Kahn, Suite 1100, 1660 L Street, N.W., Washington, DC 20036. *Contract carrier,* transporting *wheels, rims, bands, flanges, discs, and parts* for the foregoing commodities, other than for automobiles, between the facilities of Goodyear Metals Co. at Akron, OH on the one hand, and, on the other, the facilities of Caterpillar Tractor Co. at Aurora, Decatur, and Morton, IL, under continuing contract(s) with Caterpillar Tractor Co. (Hearing site: Springfield, IL or Washington, DC.)

MC 142559 (Sub-140F), filed December 27, 1979. Applicant: BROOKS TRANSPORTATION, INC., 3830 Kelley Ave., Cleveland, OH 44114. Representative: John P. McMahon, 100 East Broad Street, Columbus, OH 43215. Transporting *paper and paper products, and equipment, materials and supplies* used in the manufacture and distribution of paper and paper products, (except in bulk), between points in the United States (except AK and HI), restricted to the transportation of traffic originating at or destined to the facilities of Packaging Corporation of America. (Hearing site: Columbus, OH.)

MC 142559 (Sub-143F), filed December 26, 1979. Applicant: BROOKS TRANSPORTATION, INC., 3830 Kelley Ave., Cleveland, OH 44114. Representative: John P. McMahon, 100 East Broad Street, Columbus, OH 43215. Transporting *plastic articles and plastic material and equipment, materials and supplies used in the manufacture and distribution of plastic articles and plastic materials* (except commodities in bulk), between points in TX and LA, on the one hand, and, on the other, points in the US in and east of MN, IA, KS, OK, and TX. (Hearing site: Columbus, OH or Washington, DC.)

MC 142668 (Sub-21F), filed January 11, 1980. Applicant: AERO DISTRIBUTION CO., INC., 4814 Fulton Industrial Blvd., Atlanta, GA 30336. Representative: K. Edward Wolcott, P.O. Box 56387, Atlanta, GA 30343. *Contract carrier* transporting *such merchandise as is dealt in by home products distributors,* between points in AL, AR, GA, FL, LA, MS, NC, SC, and that portion of TN located west of the western traversal of the Tennessee River, under continuing contracts with Amway Corporation of Ada, MI. (Hearing site: Atlanta, GA or Washington, D.C.)

MC 142668 (Sub-22F), filed January 22, 1980. Applicant: AERO DISTRIBUTING CO., INC., 4814 Fulton Industrial Boulevard, Atlanta, GA 30336. Representative: K. Edward Wolcott, P.O. Box 56387, Atlanta, GA 30343. Contract carrier transporting *scrap and waste paper,* between points in FL, AL, LA, MS, NC, SC, and TN, under continuing contracts with Atlanta Intercel, a Division of International Cellulose, Inc. of Atlanta, GA. (Hearing site: Atlanta, GA or Washington, DC.)

MC 143478 (Sub-14F), filed January 17, 1980. Applicant: G. P. THOMPSON ENTERPRISES, INC., P.O. Box 146, Midway, AL 36053. Representative: Terry P. Wilson, 420 South Lawrence Street, Montgomery, AL 36104. *Contract carrier,* transporting *meats, meat products, and meat by-products, and articles distributed by meat-packing houses,* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766 (except hides and commodities in bulk in tank vehicles), from points in the United States (except Madison County, FL), to the facilities of Winn-Dixie Montgomery, Inc., at Montgomery, AL, under continuing contract(s) with Winn-Dixie Montgomery, Inc. (Hearing site: Montgomery or Birmingham, AL.)

MC 144798 (Sub-6F), filed January 2, 1980. Applicant: JAMES W. BERG and JOHN W. BERG, d.b.a. DUTCH LINE, 2120 Harbor Street, Pittsburg, CA 94565. Representative: Ronald C. Chauvel, 100 Pine Street, Suite 2550, San Francisco, CA 94111. *Contract carrier,* transporting *lubricating oils, used lubricating oils, oil additives, and drain oil,* between points in Alameda, San Mateo, Ventura, and Los Angeles Counties, CA, and points in ID, NV, OR, UT and WA, under continuing contract(s) with Ekotek Lube, Inc. (Hearing site: San Francisco, CA.)

MC 145088 (Sub-4F), filed December 14, 1979. Applicant: S & T TRUCKLOAD, INC., 2527 NE. 28th Street, Fort Worth, TX 76106. Representative: M. Ward Bailey, 2412 Continental Life Bldg., Forth Worth, TX 76102. Transporting (1) *rubber articles and plastic articles,* from the facilities of Entek Corp. of America, at or near Irving, TX, to points in the United States (except AK and HI), and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities named in (1) above, (except commodities in bulk), in the reverse direction. (Hearing site: Dallas, TX.)

MC 145108 (Sub-19F), filed January 21, 1980. Applicant: BULLET EXPRESS, INC., 5600 First Avenue., Brooklyn, NY 11220. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *Contract carrier,* transporting (1) *such commodities* as are dealt in and distributed by grocery, hardware, and drug stores; (2) *cleaning and building maintenance materials and supplies;* (3) *swimming pool, spa, and hot tub products;* (4) *chemicals;* and (5) *materials, equipment, and supplies* used in the manufacture, sale, and distribution of all the foregoing commodities, between points in the United States (except AK and HI), under continuing contract(s) with the Purex Corporation, of Carson, CA, restricted against the transportation of commodities in bulk. (Hearing site: Los Angeles, CA or Washington, DC.)

MC 145579 (Sub-11F), filed December 17, 1979. Applicant: D. IRVIN TRANSPORT LIMITED, Box 8, Station T, Calgary, Alberta, CD T2H 2G7. Representative: Charles E. Johnson, 418 East Rosser Ave., P.O. Box 1982, Bismarck, ND 58501. Transporting, in foreign commerce only, *farm machinery and parts and attachments for farm machinery,* between ports of entry on the International Boundary Line between the United States and Canada located at points in MN, ND, MT, ID, and WA, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Billings, MT.)

MC 146148 (Sub-10F), filed December 17, 1979. Applicant: B-RIGHT TRUCKING CO., 492 Old State Route 7, Pottery Addition, Steubenville, OH 43952. Representative: James M. Burtch, 100 East Broad Street, Columbus, OH 43215. Transporting *iron and steel articles,* between points in AL, IL, IN, KY, MI, MO, NJ, NY, OH, PA, VA, and WV, restricted to the transportation of traffic originating at or destined to the facilities of Tri-State Metal Products, Inc. (Hearing site: Washington, DC.)

MC 146518 (Sub-8F), filed December 14, 1979. Applicant: OWEN MOTOR FREIGHT LINE, INC. P.O. Box 7516, Alexandria, LA 71306. Representative: Bruce E. Mitchell, Suite 520, Lenox Towers South, 3390 Peachtree Road, NW., Atlanta, GA 30326. Transporting *bags and containers* from Memphis, TN,

to points in AR, MS, LA, AL, and GA. (Hearing site: New Orleans, LA.)

MC 146649 (Sub-2F), filed January 11, 1980. Applicant: JOHNNY'S TRANSFER CO., INC., 7000 Old Mt. Holly Road, Charlotte, NC 28208. Representative: Allan W. Singer, 810 Baxter Street, Charlotte, NC 28202. *Contract carrier,* transporting *drums, and parts for drums,* from the facilities of The Continental Group, Inc., Continental Forest Industries, at Charlotte, NC, to points in SC, NC, and GA, under continuing contract(s) with The Continental Group, Inc., Continental Forest Industries. (Hearing site: Charlotte or Raleigh, NC, or Washington, DC.)

MC 146868 (Sub-2F), filed December 17, 1979. Applicant: B & W GRAIN & FEED SERVICE, INC., P.O. Box 475, Railroad St., Oakboro, NC 28129. Representative: W. G. Reese, III, P.O. Box 3004, Charlotte, NC 28203. Transporting *animal, fish and poultry feed, and foodstuffs,* in dump vehicles, between points in NC, SC, and VA. (Hearing site: Charlotte, NC.)

MC 147328 (Sub-3F), filed January 17, 1980. Applicant: CLIFTON TRUCKING CORPORATION, 3445 Paterson Plank Road, North Bergen, NJ 07047. Representative: Robert B. Pepper, 268 Woodbridge Ave., Highland Park, NJ 08904. *Contract carrier,* transporting *swimming pools, file and storage cabinets and radiator enclosures and convectors, and materials, equipment, and supplies* used in the manufacturing and sales of the foregoing commodities, (except in bulk), from Carlstadt, NJ, to points in the United States (except AK and HI) under continuing contract(s) with Kero Metals Products, Company, Inc., Dalta Metal Products Co., Inc., and Aqualine Industries, Inc. (Hearing site: Newark, NJ.)

MC 147419 (Sub-3F), filed January 24, 1980. Applicant: GAUB TRANSPORTATION, INC., 3987 Hilldale Avenue, Oroville, CA 95965. Representative: David P. Christianson, 707 Wilshire Boulevard, Suite 1800, Los Angeles, CA 90017. *Contract carrier,* transporting *molding, and materials, supplies and equipment* used in the manufacture and production of molding, between points in Sutter County, CA, on the one hand, and, on the other, points in WA, OR, CA, NV, ID, MT, WY, UT, CO, AZ, NM, OK and TX, under continuing contract(s) with Eagle Molding Company No. 1. (Hearing site: San Francisco or Los Angeles, CA.)

MC 147419 (Sub-4F), filed January 24, 1980. Applicant: GAUB TRANSPORTATION, INC., 3987 Hilldale Avenue, Oroville, CA 95965. Representative: David P. Christianson, 707 Wilshire Boulevard, Suite 1800, Los Angeles, CA 90017. *Contract carrier,* transporting *prefabricated log buildings, and materials and supplies* used in the construction, installation and erection of the foregoing commodities, between the facilities of Sierra Log Homes, Inc., in Lyon County, NV, on the one hand, and, on the other, points in CA, AZ, NM, UT, NV, OR, WA, ID, WY, MT, CO, and TX, under continuing contract(s) with Sierra Log Homes. (Hearing site: San Francisco or Los Angeles, CA.)

MC 147629 (Sub-4F), filed January 11, 1980. Applicant: SONIC DELIVERY, INC., WV Route 31 at Airport Road, Williamstown, WV 26187. Representative: E. H. van Deusen, P.O. Box 97, 220 West Bridge Street, Dublin, OH 43017. *Contract carrier* transporting *aluminum, aluminum articles,* and *materials, equipment,* and *supplies* used in the manufacture, sale and distribution of aluminum and aluminum articles, between points in AL, AR, CN, DE, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NH, NJ, NY, MN, OH, PA, RI, SC, TN, VT, VA, WV, WI, and DC, under continuing contract(s) with Ormet Corporation. (Hearing site: Columbus, OH.)

MC 147839 (Sub-1F), filed August 3, 1979, published in **Federal Register** issue of February 14, 1980. Applicant: BIB ENTERPRISES, INC., 401 West 9th South Street, Salt Lake City, UT 84111. Representative: Irene Warr, 430 Judge Building, Salt Lake City, UT 84111. To operate as a *contract carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *fertilizer and pesticides,* and *materials and supplies* used in the manufacture and distribution of fertilizer and pesticides, (a) from points in CA, ID, NV, OR, and WA to points in Salt Lake County, UT, and (b) from points in Salt Lake County, UT, to points in AZ, CO, ID, MT, NM, NV, WA, and WY, and (2) *snow and ice melter,* in packages, from points in Salt Lake County, UT, to points in WI, OK, KS, MO, IA, IL, ND, SD, NE, and MN, under continuing contract(s) with Morgro Chemical, Inc., of Salt Lake City, UT. (Hearing site: Salt Lake City, UT.) This republication adds ID and NV as origins in Part (1).

MC 148269 (Sub-1F), filed January 17, 1980. Applicant: WILLIAM F. HICKS, d.b.a. HICKS TRANSPORT, 7997 Bentley, Eaton Rapids, MI 48827. Representative: Karl L. Gotting, 1200 Bank of Lansing Building, Lansing, MI 48933. *Contract carrier,* transporting (1) *steel and steel products* from points in MI, IL, IN, OH, TN, NY, WI, PA, MO, SC, NE, ID and MN to the facilities of Jacklin Steel Supply Company and Purvis Bros., Inc. at or near Lansing, Kalamazoo, Traverse City and Iron Mountain, MI and (2) *commercial and industrial stationary waste compactors and equipment* for the foregoing, from the facilities of Quality Steel Fabricators, Inc., at or near Hopkins, MI, to points in the United States (except AK and HI), under continuing contract(s) with Jacklin Steel Supply Company, Purvis Bros., Inc., and Quality Steel Fabricators, Inc. (Hearing site: Lansing, MI.)

MC 148428 (Sub-6F), filed December 14, 1979. Applicant: BEST LINE, INC., P.O. Box 765, Hopkins, MN 55343. Representative: Andrew R. Clark, 1000 First National Bank Building, Minneapolis, MN 55402. Transporting *such commodities as are dealt in by wholesale and retail food business houses (except commodities in bulk),* from the facilities of Lever Brothers Co. at or near St. Louis, MO, to Minneapolis, MN. (Hearing site: St. Louis, MO.)

MC 148589 (Sub-4F), filed January 25, 1980. Applicant: STOREY TRUCKING COMPANY, INC., P.O. Box 126, Henegar, AL 35978. Representative: Blaine Buchanan, 1024 James Building, Chattanooga, TN 37402. *Contract carrier,* transporting (1) *chemicals, boiler cleaning compounds, plasticizers, and coloring,* between Chattanooga, TN, and points in CA, IL, MI, and TX, under continuing contract(s) with Alco Chemical Corp., of Chattanooga, TN; (2) *textile goods* from Hanover, PA, and Columbus, Fort Valley, Forsyth, Macon, Newnan, Percale, Porterdale, Potterville, and Toccoa, GA, to points in CA, under continuing contract(s) with The Bibb Company, of Macon, GA; (3) *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment), between Nashville, Green Brier, Cookeville, Murfreesboro, McMinnville, Lebanon, and Millersville, TN, on the one hand, and, on the other, points in CA, OR, WA, CO, NV, AZ, ID, WY, and UT, under continuing contract(s) with Mid South Shippers Assoc., Inc., of Nashville, TN. (Hearing site: Birmingham, AL or Chattanooga, TN.)

MC 148748 (Sub-1F), filed January 14, 1980. Applicant: MICHAEL S. ESHNER, d.b.a. BURLINGTON COUNTY TRANSIT COMPANY, 1212 Stirling Street, Philadelphia, PA 19111. Representative: Raymond A. Thistle, Jr., Five Cottman Court, Homestead Road & Cottman Street, Jenkintown, PA 19046. *Contract carrier,* transporting *passengers and their baggage* between

Towers of Windsor, Cherry Hill Township, NJ, on the one hand, and, on the other, Philadelphia, PA, under continuing contract(s) with Deerwood Estates.)

MC 148818 (Sub-2F), filed December 27, 1979. Applicant: CARL PRINCE, d.b.a. PRINCE TRUCKING, Rt. 1, Box 159, Cane Hill, AR 72717. Representative: John C. Everett, P.O. Box A, 140 E. Buchanan, Prairie Grove, AR 72753. Transporting *furniture*, in cartons, from the facilities of La-z-Boy Midwest at or near Neosho, MO, to points in NM, TX, LA, KS, OK, AR, MS, AL, TN, and KY. (Hearing site: Neosho or St. Louis, MO.)

MC 148818 (Sub-4F), filed December 27, 1979. Applicant: CARL PRINCE, d.b.a. Prince Trucking, Rt. 1, Box 159, Cane Hill, AR 72717. Representative: John C. Everett, 140 E. Buchanan, Box A, Prairie Grove, AR 72753. Transporting *furniture* from the facilities of Ayers Furniture Co. at Ft. Smith, AR, to points in AZ, TX, LA, MS, AL, TN, KY, OK, IL, IA, NE, WI, MO, KS, NM, IN, and OH. (Hearing site: Ft. Smith or Little Rock, AR.)

MC 148849 (Sub-3F), filed January 15, 1980. Applicant: EQUITABLE BAG CO., INC., 45–50 Van Dam Street, Long Island City, NY 11101. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *Contract carrier*, transporting *such commodities as are sold or dealt in by department stores and paper and paper products*, (except commodities in bulk), from North Bergen, NJ, to Indianapolis, IN, and Cincinnati, OH, under continuing contract(s) with Associated Dry Goods Corporation, of New York, NY. (Hearing site: New York, NY or Washington, DC.)

MC 148998 (Sub-2F), filed January 29, 1980. Applicant: WALTER G. LEWIS, d.b.a. AIR CARGO TRANSPORT, 910 Stanley, Gillette, WY 82716. Representative: Thomas D. Roberts, 306 South Gillette Avenue, P.O. Box 1237, Gillette, WY 82716. Contract carrier, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods, as defined by the Commission, commodities in bulk, and those requiring special equipment) between points in Campbell County. WY. (Hearing site: Gillette, or Casper, WY.)

MC 149078F, filed December 27, 1979. Applicant: ROAD WEST, INC., 1315 E. Holt Blvd. (P.O. Box 3637), Ontario, CA 91761. Representative: R. Y. Schureman, 1545 Wilshire Blvd., Los Angeles, CA 90017. Transporting *industrial fasteners and auto parts, and materials, equipment and supplies used in the equipment maintenance and auto parts industries*, between the facilities of Bowman Distribution Division at Elizabethtown, KY, on the one hand, and, on the other, points in CA, NJ, OH, TX and WV. (Hearing site: Los Angeles, CA.)

MC 149078 (Sub-1F), filed December 27, 1979. Applicant: ROAD WEST, INC., 1315 E. Holt Blvd. (P.O. Box 3637), Ontario, CA 91761. Representative: R. Y. Schureman, 1545 Wilshire Blvd., Los Angeles, CA 90017. Transporting *label stock, and equipment, parts and supplies used in the manufacture of label stock* (except commodities in bulk and those requiring special equipment), from Peach Tree City, GA, Fitchburg and Holyoke, MA, International Falls, MN, Akron, Dayton, Hamilton and Painesville, OH, Quakertown, PA and Rheinlander, WI, to the facilities of Fasson, and Avery International Company at Cucamonga, CA. (Hearing site: Los Angeles, CA.)

MC 149078 (Sub-2F), filed December 27, 1979. Applicant: ROAD WEST, INC., 1315 E. Holt Blvd. (P.O. Box 3637), Ontario, CA 91761. Representative: R. Y. Schureman, 1545 Wilshire Blvd., Los Angeles, CA 90017. Transporting *auto parts, and equipment, materials and supplies used in the manufacture, display, sale or merchandising* of auto parts (1) from Lynchburg, VA, to Burlington, IA, and (2) between Lynchburg, VA, and Burlington, IA, on the one hand, and, on the other, points in CA, GA, OR, TX and WA. (Hearing site: Los Angeles, CA.)

MC 149078 (Sub-3F), filed December 27, 1979. Applicant: ROAD WEST, INC., 1315 E. Holt Blvd. (P.O. Box 3637), Ontario, CA 91761. Representative: R. Y. Schureman, 1545 Wilshire Blvd., Los Angeles, CA 90017. Transporting *equipment, materials and supplies used in the electroplating and metal finishing industries (except commodities in bulk)*, between Detroit, Monrenci, and Warren, MI, on the one hand, and, on the other, points in CA and UT. (Hearing site: Los Angeles, CA.)

MC 149078 (Sub-4F), filed December 27, 1979. Applicant: ROAD WEST, INC., 1315 E. Holt Blvd. (P.O. Box 3637), Ontario, CA 91761. Representative: R. Y. Schureman, 1545 Wilshire Blvd., Los Angeles, CA 90017. Transporting *plastic liquid, resin, coal tar, and petroleum and resin compounds* (except commodities in bulk), between Detroit, MI, on the one hand, and, on the other, points in CA, CO, OR, TX and WA. (Hearing site: Los Angeles, CA.)

MC 149078 (Sub-5F), filed December 27, 1979. Applicant: ROAD WEST, INC., 1315 E. Holt Blvd. (P.O. Box 3637), Ontario, CA 91761. Representative: R. Y. Schureman, 1545 Wilshire Blvd., Los Angeles, CA 90017. Transporting *building materials and equipment and supplies used in the manufacture, prefabrication, construction, erection or installation of buildings*, between Cuyahoga Falls, West Salem and Wadsworth, OH, on the one hand, and, on the other, points in AR, AZ, CA, CO, ID, MT, NV, NM, OK, OR, TX, UT and WA. (Hearing site: Los Angeles, CA.)

MC 149108, filed December 27, 1979. Applicant: R. REED TRUCKING, INC., 8383 Croton Road, Johnstown, OH 43031. Representative: A. Charles Tell, 100 East Broad Street, Columbus, OH 43215. Transporting *tire and tube repairing materials and supplies*, from the facilities of Technical Rubber Company at Johnstown, OH, to points in the US (except AK and HI). (Hearing site: Columbus, OH.)

MC 149229 (Sub-1F), filed January 21, 1980. Applicant: JOYCLIFF TRUCK LEASING COMPANY, INC., 2010 Joycliff Circle, Macon, GA 30201. Representative: Clyde W. Carver, P.O. Box 720434, Atlanta, GA 30328. *Contract carrier*, transporting *articles dealt in by janitorial supply houses and materials and supplies* used in the manufacture of janitorial supplies, (except commodities in bulk), (1) from Macon, GA, to points in AL, AR, FL, IN, KY, LA, MS, NY, NC, PA, SC, TN, TX, VA, and WV, and (2) in the reverse direction, under continuing contract(s) with Southern Chemical Products Co., Inc. (Hearing site: Atlanta, GA or Washington, DC.)

MC 149279F, filed November 16, 1979. Applicant: CARVEL CORPORATION, 201 Saw Mill River Rd., Yonkers, NY 10701. Representative: Robert Comerford (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment), between points in CA and NY.

MC 149338, filed January 28, 1980. Applicant: FLEMING TRANSPORT, INC., 222 Airport Road, Butler, PA 16001. Representative: William A. Gray, Esq., Wick, Vuono & Lavelle, 2310 Grant Building, Pittsburgh, PA 15219. *Contract carrier* transporting *liquid asphalt* and *liquid paving materials*, in bulk, in tank vehicles, between points in WV, OH, PA, and MD, under continuing contract(s) with Western Emulsion Company, Inc., The Bituminous Emulsion Co., and Lake Asphalt & Petroleum Co. (Hearing site: Pittsburgh, PA or Washington, DC.)

MC 149339F, filed July 16, 1979. Applicant: NORTH AMERICAN

DRIVEAWAY, INC., 3433 Progress Drive, Cornwells Heights, PA 19020. Representative: Robert J. Coyne, Suite 605, 8720 Georgia Ave., Silver Spring, MD 20910. *Contract carrier,* transporting *trucks, truck chassis, and tractors,* in secondary movements, in driveaway service, (1) from the ports of entry at Philadelphia, PA, Wilmington, DE, and Newark, NJ, to the facilities of Iveco Trucks, of North America, Inc., at Cornwells Heights, PA, and (2) from the facilities of Iveco Trucks of North America, Inc., at Cornwells Heights, PA, to points in the United States (except AK and HI), under continuing contract(s) with Iveco Trucks of North America, Inc. (Hearing site: Philadelphia, PA, or Washington, DC.)

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Decided: Feb. 26, 1980.

By the Commission, Review Board Number 3, Members Parker, Fortier, and Hill.

MC 1117 (Sub-27F), filed January 11, 1980. Applicant: M.G.M. TRANSPORT CORP., 70 Maltese Drive, Totowa, NJ 07512. Representative: Morton E. Kiel, Suite 1832, 2 World Trade Center, New York, NY 10048. Transporting *office furniture and equipment,* from New York, NY to points in SC. (Hearing site: New York, NY.)

MC 11207 (Sub-516F), filed January 8, 1980. Applicant: DEATON, INC., 317 Ave. W., P.O. Box 938, Birmingham, AL 35201. Representative: Kim D. Mann, Suite 1010, 7101 Wisconsin Ave., Washington, DC 20014. Transporting (1) *iron and steel storage tanks and storage tank parts* and (2) *machinery, materials, equipment, and supplies* used in the installation and assembly of the commodities in (1) above, between points in Harris and Smith Counties, TX, on the one hand, and, on the other, points in the United States in and east of LA, AR, OK, KS, MO, IA, and MN. (Hearing site: Houston, TX; Washington, DC.)

MC 11207 (Sub-517F), filed January 8, 1980. Applicant: DEATON, INC., 317 Ave. W., P.O. Box 938, Birmingham, AL 35201. Representative: Kim D. Mann, Suite 1010, 7101 Wisconsin Ave., Washington, DC 20014. Transporting *buildings, building panels, building parts,* and *materials, accessories, and supplies* used in the installation, erection, and construction of buildings, building panels, and building parts (except commodities in bulk) between the facilities of Butler Manufacturing Company, at San Marcos, TX, on the one hand, and, on the other, points in the United States (except AK and HI) restricted to traffic originating at or destined to the facilities of Butler Manufacturing Company. (Hearing site: San Antonio, TX; Washington, DC.)

MC 30837 (Sub-494F), filed January 3, 1980. Applicant: KENOSHA AUTO TRANSPORT CORPORATION, 4314 39th Ave., Kenosha, WI 53142. Representative: Paul F. Sullivan, 711 Washington Bldg., N.W., Washington, DC 20005. Transporting *automobiles and trucks,* in secondary movements, in truckaway service, (a) from Buffalo, NY, and points within 20 miles thereof, to points in NY and PA, (b) from Hagerstown, MD, and points within 20 miles thereof, to points in DE, MD, PA, VA, WV, and DC; (c) from Montebello and Los Angeles, CA, and points within 20 miles thereof, to points in CA and NV, (d) from Norristown, PA, and points within 20 miles thereof, to points in DE, CT, MD, NJ, NY, PA, and DC, (e) from St. Pual, MN, and points within 20 miles thereof, to points in MN, ND, SD, and WI, and (f) from Westboro, MA, and points within 20 miles thereof, to points in CT, ME, MA, NH, and RI, restricted to the transportation of Renault vehicles manufactured or assembled in France. (Hearing site: Washington, DC.)

MC 41406 (Sub-143F), filed May 14, 1979. Applicant: ARTIM TRANSPORTATION SYSTEMS, INC., 7105 Kennedy Ave., Hammond, IN 46323. Representative: Wade H. Bourdon (same address as applicant). Transporting *such commodities* as are dealt in or used by manufacturers and dealers of (a) agricultural equipment, (b) industrial equipment, and (c) lawn care and leisure products (except commodities in bulk), (1) between the facilities of Deere & Company, in Rock Island County, IL, on the one hand, and, on the other, points in CO, KS, MO, NE, OK, WY, and TX, restricted to the transportation of traffic originating at the named facilities and destined to the named states, or originating in the named states and destined to the named facilities, and (2) between points in CO, KS, MO, NE, OK, WY, and TX, restricted to the transportation of traffic originating at or destined to the facilities of dealers of Deere & Company, and restricted to traffic (except traffic having a prior or subsequent movement by rail or water) originating at and destined to points in the named states. (Hearing site: Chicago, IL, or St. Paul, MN.)

MC 42487 (Sub-968F), filed January 10, 1980. Applicant: CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, 175 Linfield Dr., Menlo Park, CA 94025. Representative: V. R. Oldenburg, P.O. Box 3062, Portland, OR 97208. Transporting *general commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, assembled automobiles and commodities requiring special equipment), serving the facilities of Union Carbide Corporation and Uniroyal, Inc., at or near Red Oak, IA, and Union Carbide Corporation, Nixdorff Lloyd Chain Company, AC Lightning Security, Inc., Robbins Lightning, Inc., Lloyd Metal Products Steel and Wire Company, and Uniroyal, Inc., at Maryville, MO as off-route points in connection with carrier's otherwise authorized regular route operations. (Hearing site: Kansas City, MO, or Omaha, NE.)

Note.—Applicant intends to tack to its existing authority and any authority it may acquire in the future.

MC 42487 (Sub-969F), filed January 9, 1980. Applicant: CONSOLIDATED FREIGHTWAYS, CORPORATION OF DELAWARE, 175 Linfield Dr., Menlo Park, CA 94025. Representative: V. R. Oldenburg, P.O. Box 3062, Portland, OR 97208. Over regular routes, transporting *general commodities,* (except those of unusual value. Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment) (1) between Muskogee, OK and Oklahoma City, OK: from Muskogee over U.S. Hwy 69 to junction Interstate Hwy 40, then over Interstate Hwy 40 to Oklahoma City, and return over the same route, (2) between Oklahoma City, OK and Liberal, KS: from Oklahoma City over Interstate Hwy 40 to junction U.S. Hwy 270 near El Reno, OK, then over U.S. Hwy 270 to Elmwood, OK, then over OK Hwy 3 to junction U.S. Hwy 83 near Gray, OK, then over U.S. Hwy 83 to Liberal, and return over the same route, and (3) between Liberal, KS and Denver, CO: from Liberal over U.S. Hwy 83 to Garden City, KS, then over U.S. Hwy 50 to Lamar, CO, then over U.S. Hwy 287 to junction Interstate Hwy 70 to Denver, and return over the same route, serving no intermediate points in connection with Routes (1) through (3) described above, as alternate routes for operating convenience only in connection with carrier's otherwise authorized regular route operations. (Hearing site: Dallas, TX.)

Note.—Applicant intends to tack the authorities described above. Applicant also intends to tack to its existing authority and any authority it may acquire in the future.

MC 51146 (Sub-803F), filed January 10, 1980. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: Matthew J. Reid, Jr. (same address as applicant). Transporting *such*

commodities as are dealt in, or used by, manufacturers and distributors of outboard motors between the facilities of Chrysler Outboard Corporation on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Chicago, IL.)

MC 51146 (Sub-804F), filed January 10, 1980. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: Matthew J. Reid, Jr. (same address as applicant). Transporting *Such merchandise* as is dealt in by retail, wholesale, chain grocery, and food business houses from Jessup, MD to points in IL, IN IA, KY, MI, MO, HO, TN, and WI. (Hearing site: Chicago, IL.)

MC 51146 (Sub-811F), filed January 8, 1980. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: Matthew J. Reid, Jr. (same address as applicant). Tranporting *such commodities* in are dealt in, or used by, manufacturers and distributors of clothing between points in the United States (except AK and HI), restricted to traffic originating at or destined to the facilities of Jockey International, Inc. (Hearing site: Chicago, IL.)

MC 55896 (Sub-133F), filed January 11, 1980. Applicant: R–W SERVICE SYSTEM, INC., 20225 Goodard Rd., Taylor, MI 48180. Representative: George E. Batty (same address as applicant). Transporting *reinforced concrete beams and concrete building products,* (except commodities in bulk), from the facilities of Precast/ Schokbeton, Inc., at Kalamazoo, MI, to points in IL, IN, KY, OH, PA, and WI. (Hearing site: Lansing, MI.)

MC 59117 (Sub-73F), filed January 8, 1980. Applicant: ELLIOTT TRUCK LINE, INC., P.O. Box 1, Vinita, OK 74301. Representative: Wilburn L. Williamson, Suite 615-East, The Oil Center, 2601 Northwest Expressway, Oklahoma City, OK 73112. Transporting *activated carbon,* in bulk, in tank vehicles, from Mayes County, OK to points in AL, AR, CO, GA, IL, IN, IA, KS, LA, MN, MS, MO, NE, NM, OH, SD, TN, TX and WI. (Hearing site: Oklahoma City, OK.)

MC 63417 (Sub-263F), filed January 8, 1980. Applicant: BLUE RIDGE TRANSFER COMPANY, INC., P.O. Box 13447, Roanoke, VA 24034. Representative: William E. Bain (same address as applicant). Transporting *new furniture and furniture parts,* from Altavista, Dublin, Pulaski, Rocky Mount, VA and the facilities of Pulaski Furniture Corporation at or near Martinsville, VA, to points in AZ, CA, CO, ID, MT, NV, NM, OR, UT, WA, WY. (Hearing site: Roanoke, VA.)

MC 63417(Sub-265F), filed January 9, 1980. Applicant: BLUE RIDGE TRANSFER COMPANY, INC., P.O. Box 13447, Roanoke, VA 24034. Representative: William E. Bain (same address as applicant). Transporting *container parts and accessories, and materials, supplies, and equipment* used in the manufacture and distribution thereof (except commodities in bulk and those requiring special equipment) between points in the United States (except AK and HI); restricted to traffic originating at or destined to the facilities of Continental Can Corporation. (Hearing site: Roanoke, VA, or Washington, DC.)

MC 69116 (Sub-255F), filed January 7, 1980. Applicant: SPECTOR INDUSTRIES, INC., d.b.a. SPECTOR FREIGHT SYSTEM, 1050 Kingery Highway, Bensenville, IL 60106. Representative: Edward G. Bazelon, 39 South La Salle St., Chicago, IL 60603. Transporting (1) *derrick bases, booms, legs, masts, ore sills, iron or steel, and (2) materials and supplies* used in the manufacture of the commodities named in (1) above: From Watertown, SD, to points in the United States in and east of ND, SD, NE, CO, OK, and TX. (Hearing site: Chicago, IL.)

MC 69116 (Sub-256F), filed January 8, 1980. Applicant: SPECTOR INDUSTRIES, INC., d.b.a. SPECTOR FREIGHT SYSTEM, 1050 Kingery Hwy., Bensenville, IL 60106. Representative: Edward G. Bazelon, 39 South La Salle Street, Chicago, IL 60603. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving Pownal, VT, as an off-route point in connection with carrier's presently authorized regular-route operations. (Hearing site: Chicago, IL.)

Note.—Applicant proposes to tack the requested authority with its existing authority.

MC 69116 (Sub-257F), filed January 8, 1980. Applicant: SPECTOR INDUSTRIES, INC., d.b.a. SPECTOR FREIGHT SYSTEM, 1050 Kingery Hwy., Bensenville, IL 60106. Representative: Edward G. Bazelon, 39 South La Salle Street, Chicago, IL 60603. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving Clinton, IA, as an off-route point in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Chicago, IL.)

Note.—Applicant proposes to tack the requested authority with its existing authority.

MC 99136 (Sub-3F), filed January 18, 1980. Applicant: CHARLES C. TOWNE & SONS, INC., 25 Hampshire Road, P.O. Box 245, Methuen, MA 01844. Representative: Frank J. Weiner, 15 Court Square, Boston, MA 02108. Transporting (1) *general commodities* (except classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in MA, (2) *paper and paper products,* and *such commodities* as are dealt in by retail department stores (except commodities in bulk), from Holyoke and Springfield, MA to points in Rockingham, Hillsborough, Cheshire, Sullivan, Merrimack, and Strafford Counties, NH, and York and Cumberland Counties, ME, (3) *such commodities* as are dealt in by retail department stores, (except commodities in bulk), from Needham and Methuen, MA to Goffstown and Nashua, NH, (4) *hardboard,* from Methuen, MA to points in Rockingham, Hillsborough, Cheshire, Sullivan, Merrimack, and Strafford Counties, NH, and York and Cumberland Counties, ME, and (5) *such commodities* as are dealt in by hardware stores (except commodities in bulk), from Methuen, MA, to points in Rockingham, Hillsborough, Cheshire, Sullivan, Merrimack, and Strafford Counties, NH, and York and Cumberland Counties, ME. Condition: Prior or coincidental cancellation, at carrier's written request of its Certificate of Registration in No. MC 99136 (Sub 2). (Hearing site: Boston, MA.)

MC 99427 (Sub-46F), filed January 8, 1980. Applicant: ARIZONA TANK LINES, INC., 666 Grand Ave., Des Moines, IA 50309. Representative: E. Check, P.O. Box 855, Des Moines, IA 50304. Transporting *ammonium fluoride solution,* in bulk, from Phoenix, AZ to Kokomo, IN. (Hearing site: Phoenix, AZ, or Des Moines, IA.)

MC 100666 (Sub-472F), filed May 9, 1979. Applicant: MELTON TRUCK LINES, INC., P.O. Box 7666, Shreveport, LA 71107. Representative: Wilburn L. Williamson, Suite 615-East, The Oil Center, 2601 Northwest Expressway, Oklahoma City, OK 73112. Transporting *wood products, veneer,* and *plywood,* from the facilities of Kearse Manufacturing Company, at or near Olar, SC, to those points in the United States in and east of ND, SD, NE, KS, OK, and TX, (except VA). (Hearing site: Charleston, SC.)

MC 100666 (Sub-475F), filed May 16, 1979. Applicant: MELTON TRUCK LINES, INC., P.O. Box 7666 Shreveport, LA 71107. Representative: Wilburn L. Williamson, Suite 615-East, The Oil Center, 2601 Northwest Expressway, Oklahoma City, OK 73112. Transporting *such commodities* as are dealt in or used by manufacturers and dealers of (a) agricultural equipment, (b) industrial equipment, and (c) lawn care and leisure products, (except commodities in bulk), (1) between the facilities of Deere & Company, at points in Black Hawk, Dubuque, Polk, Scott and Wapello Counties, IA, Rock Island County, IL, and Dodge County, WI, on the one hand, and, on the other, points in AL, AR, FL, GA, LA, MS, NC, OK, SC, TN, TX, and VA, restricted to the transportation of traffic originating at the named facilities and destined to the named states, or originating in the named states and destined to the named facilities, and (2) between points in AL, AR, FL, GA, LA, MS, NC, OK, SC, TN, TX, and VA, restricted to the transportation of traffic originating at or destined to the facilities of dealers of Deere & Company, and further restricted to traffic (except traffic having a prior or subsequent movement by rail or water) originating at and destined to points in the named states. (Hearing site: Chicago, IL, or St. Paul, MN.)

MC 100666 (Sub-522F), filed January 14, 1980. Applicant: MELTON TRUCK LINES, INC., P.O. Box 7666, Shreveport, LA 71107. Representative: Wilburn L. Williamson, Suite 615-East, The Oil Center, 2601 Northwest Expressway, Oklahoma City, OK 73112. Transporting *metal and metal articles,* from Eagle Pass and Laredo, TX to all points in the United States (except AK and HI). (Hearing site: Dallas, TX.)

MC 100666 (Sub-523F), filed January 14, 1980. Applicant: MELTON TRUCK LINES, INC., P.O. Box 7666, Shreveport, LA 71107. Representative: Wilburn L. Williamson, Suite 615-East, The Oil Center, 2601 Northwest Expressway, Oklahoma City, OK 73112. Transporting *metal and metal articles,* from points in Atchison, Douglas, Johnson, Leavenworth, Shawnee and Wyandotte Counties, KS, and Clay and Jackson Counties, MO, to points in IA, IL, IN, MI, MN, OH and WI. (Hearing site: Kansas City, MO.)

MC 102567 (Sub-250F), filed January 7, 1980. Applicant: McNAIR TRANSPORT, INC., 4295 Meadow Lane, P.O. Drawer 5357, Bossier City, LA 71111. Representative: Joe C. Day, 13403 Northwest Fwy., Suite 130, Houston, TX 77040. Transporting *liquid chemicals,* in bulk, in tank vehicles, between the facilities of E. I. du Pont de Nemours & Co., Inc., at or near Orange and Victoria, TX, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Houston, TX.)

MC 109397 (Sub-489F), filed January 7, 1980. Applicant: TRI-STATE MOTOR TRANSIT CO., A Delaware Corporation, P.O. Box 113, Joplin, MO 64801. Representative: A. N. Jacobs (same address as applicant). Transporting (1) *Water conditioning equipment,* and (2) *parts, materials, and supplies* (except commodities in bulk) for items in (1) above, from Asheville, NC, and Commerce City, CO, to points in the United States (except AK and HI). (Hearing site: Denver, CO.)

MC 109397 (Sub-492F), filed January 3, 1980. Applicant: TRI-STATE MOTOR TRANSIT CO., A Delaware Corporation, P.O. Box 113, Joplin, MO 64801. Representative: A. N. Jacobs (same address as applicant). Transporting *general commodities* (except those of unusual value, household goods as defined by the Commission, and commodities in bulk), between the Henderson County Riverport Authority facility in Henderson County, KY, on the one hand, and, on the other, points in the United States in and east of ND, SD, NE, KS, OK, and TX. Condition: To the extent the certificate granted in this proceeding authorizes the transportation of classes A and B explosives, it will expire 5 years from the date of issuance. (Hearing site: Louisville, KY.)

MC 118696 (Sub-28F), filed January 14, 1980. Applicant: FERREE FURNITURE EXPRESS, INC., 252 Wildwood Road, Hammond, IN 46234. Representative: John F. Wickes, Jr., 1301 Merchants Plaza, Indianapolis, IN 46204. Transporting *new furniture,* from the facilities of Jasper Stylemasters, Division of Kimball International, Inc. at Jasper, IN to Chicago, IL, Framingham, Newburyport, Norwood, Westwood, Wilburn and Wilmingham, MA, Benton Harbor, MI, Portsmouth, NH, Gaffney, SC, and Newport, TN. (Hearing site: Indianapolis, IN or Chicago, IL.)

MC 119777 (Sub-362F), filed March 28, 1979. Applicant: LIGON SPECIALIZED HAULER, INC., Highway 85-East, Madisonville, KY 42431. Representative: Carl U. Hurst, P.O. Drawer L, Madisonville, KY 42431. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1)(a) *pipe, pipe fittings, and pipe accessories,* and (b) *materials, equipment, and supplies* used in the installation of the commodities named in (1)(a) above, (except commodities in bulk, in tank vehicles) from Henderson, KY, to those points in the United States in and east of MT, WY, CO, and NM, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities named in (1) above, (except commodities in bulk, in tank vehicles), in the reverse direction. (Hearing site: Louisville, KY, or Nashville, TN.)

MC 121496 (Sub-43F), filed January 10, 1980. Applicant: CANGO CORP., Suite 2900, 100 Milam Bldg., Houston, TX 77002. Representative: E. Stephen Heisley, 805 McLachlen Bank Bldg., 666 Eleventh St., NW, Washington, DC 20001. Transporting *liquid petroleum oils and petro-chemicals,* in bulk, in tank vehicles, from Natchez, MS, to points in AR, IL, IN, KS, LA, MO, OH, TN, and TX. (Hearing site: Chicago, IL.)

MC 134286 (Sub-153F), filed January 7, 1980. Applicant: ILLINI EXPRESS, INC., P.O. Box 1564, Sioux City, IA 51102. Representative: Julie Humbert (same address as above). Transporting (1) *laboratory equipment, materials, and supplies,* and (2) *empty pallets,* from Los Angeles, CA, and Denver, CO, to the facilities of Fisher Scientific Company at Indiana, PA, and Somerville, NJ, restricted to traffic destined to Fisher Scientific Company. (Hearing site: Pittsburgh, PA, or Denver, CO.)

MC 134286 (Sub-154F), filed January 7, 1980. Applicant: ILLINI EXPRESS, INC., P.O. Box 1564, Sioux City, IA 51102. Representative: Julie Humbert (same address as above). Transporting (1) *diagnostic chemicals* (except in bulk), in vehicles equipped with mechanical refrigeration, from the facilities of Fisher Scientific Company at Orangeburg, NY, to points in the United States (except AK, CT, DE, HI, MD, ME, NH, NY, PA, RI, VT, and DC), (2) *laboratory chemicals and laboratory equipment and supplies* (except in bulk), from the facilities of Fisher Scientific Company, at or near Bridgewater Township, NJ, to Rochester, NY, and (3) *damaged and refused laboratory chemicals, laboratory equipment and supplies, and pallets,* from Atlanta, GA, Chicago, IL, Cincinnati and Cleveland, OH, Houston, TX, Los Angeles, CA, Orlando, FL, Pittsburgh, PA, St. Louis, MO, Raleigh, NC, and Rochester, NY to the facilities of Fisher Scientific Company at or near Bridgewater Township, NJ, restricted to traffic originating at or destined to the facilities of Fisher Scientific Company. (Hearing site: Pittsburgh, PA, or Denver, CO.)

MC 134286 (Sub-155F), filed January 7, 1980. Applicant: ILLINI EXPRESS, INC., P.O. Box 1564, Sioux City, IA 51102. Representative: Julie Humbert (same address as above). Transporting

laboratory furniture, from the facilities of Labconco, at Kansas City, MO, to the facilities of Fisher Scientific Company at Indiana, PA, Somerville, NJ, and Springfield, NJ, restricted to traffic destined to Fisher Scientific Company. (Hearing site: Pittsburgh, PA, or Denver, CO.)

MC 134467 (Sub-57F), filed January 7, 1980. Applicant: POLAR EXPRESS, INC., P.O. Box 845, Springdale, AR 72764. Representative: Charles M. Williams, 350 Capitol Life Center, 1600 Sherman St., Denver, CO 80203. Transporting *commodities dealth in by manufacturers and distributors or bakery products* (except in bulk), from the facilities of Dawn Foods Products, Inc. at or near Kansas City, KS to points in the United States (except AK, HI, CA, ID, NV, WA, OR, AZ and UT). (Hearing site: Detroit, MI, or Little Rock, AR.)

MC 135797 (Sub-296F), filed January 11, 1980. Applicant: J. B. HUNT TRANSPORT, INC., P.O. Box 130, Lowell, AR 72745. Representative: Paul R. Bergant (same address as applicant). Transporting (1) *such commodities* as are dealt in by agricultural feed business house, soy products, dry flour past, dairy based products, and (2) *materials, equipment, ingredients and supplies* used in the development, manufacture, distribution and sale of the commodities named in (1) above (except commodities in bulk), between points in the United States (except AK and HI), restricted to shipments originating at or destined to the facilities used by the Ralston Purina Company. (Hearing site: St. Louis, MO, or Washington, DC.)

MC 135797 (Sub-298F), filed January 11, 1980. Applicant: J. B. HUNT TRANSPORT, INC., P.O. Box 130, Lowell, AR 72745. Representative: Paul R. Bergant (same address as applicant). Transporting (1) *steel nuts*, from the facilities of Amerace Corporation, at Pocahontas, AR, to points in IL, IN, and OH, and (2) *materials, equipment and supplies* used in the manufacture of the commodities in (1) above, from points in IL, IN, MI, and OH, to the facilities of Amerace Corporation, at Pocahontas, AR. (Hearing site: Little Rock, AR, or Washington, DC.)

MC 135797 (Sub-299F), filed January 11, 1980. Applicant: J. B. HUNT TRANSPORT, INC., P.O. Box 130, Lowell, AR 72745. Representative: Paul R. Bergant (same address as applicant). Transporting (1) *recreational equipment and sporting goods*, and (2) *materials, equipment and supplies* used in the manufacture of the commodities in (1) above (except in bulk), between the facilities of Kransco Manufacturing, at Virginia Beach, VA, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Washington, DC.)

MC 136786 (Sub-198F), filed January 10, 1980. Applicant: ROBCO TRANSPORTATION, INC., 4475 N.E. 3rd St., Des Moines, IA 50313. Representative: Stanley C. Olsen, Jr., 7400 Metro Blvd., Suite 411, Edina, MN 55435. Transporting *foodstuffs*, and *materials, equipment and supplies* used in the manufacture, distribution and sale of foodstuffs (except commodities in bulk), from Port and Milwaukie, OR, and Aberdeen and Markham, WA, to points in AZ, CA, CO, ID, MT, NV, OR, and UT. (Hearing site: Minneapolis, MN, or Chicago, IL.)

MC 136786 (Sub-208F), filed January 11, 1980. Applicant: ROBCO TRANSPORTATION, INC., 4475 N.E. 3rd St., Des Moines, IA 50313. Representative: Stanley C. Olsen, Jr., 7400 Metro Blvd., Suite 411, Edina, MN 55435. Transporting *fertilizer, potting soil, and materials, equipment and supplies* used in the sale and distribution thereof (except commodities in bulk and those requiring special equipment), from points in OH to points in AL, AR, CO, CT, DE, FL, GA, IL, IN, IA, KS, KY, LA, MA, MD, MI, MN, MO, MS, NE, NH, NJ, NY, NC, OK, PA, RI, SC, SD, TN, TX, VA, WV, and WI. (Hearing site: Minneapolis, MN, or Chicago, IL.)

MC 138177 (Sub.10F), filed Januaray 9, 1980. Applicant: BROWN TRUCKING, INC., 7622 Apple Valley Rd., Germantown, TN 38138. Representative: John Paul Jones, P.O. Box 3140, Front St. Station, 189 Jefferson Ave., Memphis, TN 38103. Transporting *cement*, between Memphis, TN, and Little Rock, AR, on the one hand, and, on the other, AR, TN, and MS. (Hearing site: Memphis, TN.)

MC 138627 (Sub-85F), filed January 7, 1980. Applicant: SMITHWAY MOTOR XPRESS, INC., P.O. Box 404, Fort Dodge, IA 50501. Representative: Arlyn L. Westergren, Suite 106, 7101 Mercy Rd., Omaha, NE 68106. Transporting *asphaltum, building paper, prepared roofing, prepared shingles, roofing asphalt, roofing cement and roofing paper* (except commodities in bulk in tank vehicles), between the facilities of Tamko Asphalt Products, Inc. at Phillipsburg, KS; Tuscaloosa, AL; Frederick, MD; Joplin, MO, on the one hand, and, on the other, points in the US (except AK and HI). (Hearing site: Kansas City, MO, or Omaha, NE.)

MC 138627 (Sub-86F), filed January 11, 1980. Applicant: SMITHWAY MOTOR XPRESS, INC., P.O. Box 404, Fort Dodge, IA 50501. Representative: Arlyn L. Westergren, Suite 106, 7101 Mercy Rd., Omaha, NE 68106. Transporting *building materials, gypsum and gypsum products and materials and supplies* (except liquid commodities in bulk) *used in the manufacture, installation or distribution thereof*, between the facilities of United States Gypsum Company at Southard, OK, on the one hand, and, on the other, points in AR, CO, IL, IN, IA, KS, KY, MI, MN, MO, NE, ND, OH, OK, SD, TX, WI, and WY. (Hearing site: Chicago, IL, or Omaha, NE.)

MC 138826 (Sub-11F), filed January 7, 1980. Applicant: JERALD HEDRICK, d.b.a. HEDRICK & SON TRUCKING, Rural Rt. No. 1, Warren, IN 46792. Representative: Robert A. Kriscunas, 1301 Merchants Plaza, Indianapolis, IN 46204. Transporting *fertilizer and fertilizer ingredients*, from Louisville, KY to points in IN. (Hearing site: Indianapolis, IN, or Chicago, IL.)

MC 144557 (Sub-16F), filed January 8, 1980. Applicant: HUDSON TRANSPORTATION, INC., P.O. Box 847, Troy, AL 36081. Representative: William P. Jackson, Jr., 3426 N. Washington Blvd., P.O. Box 1240, Arlington, VA 22210. Transporting *such commodities* as are dealt in by wholesale, retail and chain grocery and food business houses (except commodities in bulk), from the facilities of Hunt-Wesson Foods, Inc., at or near Atlanta, GA, to points in AL. (Hearing site: Washington, DC.)

MC 144957 (Sub-7F), filed January 9, 1980. Applicant: PETERCLIFFE, LTD., 12623 E. Imperial Hwy., Santa Fe Springs, CA 90670. Representative: Patrick H. Smyth, Suite 521, 19 So. LaSalle, St., Chicago, IL 60603. Transporting *general commodities*, between points in LA, OK, NM, and TX, on the one hand, and, on the other, points in AZ, CA, CT, FL, GA, IL, IN, KS, KY, MD, MA, MI, MO, NV, NJ, NY, NC, OH, PA, SC, TN, UT, and WI, restricted to the transportation of traffic moving on freight forwarder bills of lading as defined by the Commission. CONDITION: To the extent the certificate granted in this proceeding authorizes the transportation of classes A and B explosives, it will expire 5 years from the date of issuance. (Hearing site: Los Angeles, CA.)

MC 144977 (Sub-1F), filed January 7, 1980. Applicant: BOBBY McDANIEL, d.b.a. SERVICE TRUCKING COMPANY, 2050 Beaver Rd., Rossville, CA 30741. Representative: Blaine Buchanan, 1024 James Bldg., Chattanooga, TN 37402. Transporting *general commodities* (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring

special equipment), between Cleveland, TN, on the one hand, and, on the other, points (except Calhoun) in McMinn County, TN, restricted to the transportation of traffic having a prior or subsequent movement by rail. (Hearing site: Chattanooga or Knoxville, TN.)

MC 145516 (Sub-8F), filed January 7, 1980. Applicant: T. G. STEGALL TRUCKING CO., INC., 8100 E. Independence Blvd., Matthews, NC 28105. Representative: Triston Gene Stegall, Jr. (same address as applicant). Transporting *petroleum products* (except in bulk), between Sewaren, NJ, Charlotte, NC and Newark, NJ, restricted to shipment at or destined to the points named above. (Hearing site: Charlotte, NC, or Washington, DC.)

MC 146646 (Sub-76F), filed January 10, 1980. Applicant: BRISTOW TRUCKING CO., a corporation, P.O. Box 6355A, Birmingham, AL 35217. Representative: James W. Segrest (same address as applicant). Transporting *lumber, plywood, compressed woods, built-up woods, veneers, and millwork,* from the facilities of Kearse Manufacturing Co., Inc., at or near Olar, SC, to Center, TX. Condition: Person or persons who appears to be engaged in common control of applicant and another regulated carrier must either file an application under 49 U.S.C. 11343(A) of the Interstate Commerce Act, or submit an affidavit indicating why such approval is unnecessary. (Hearing site: Columbia, SC, or Birmingham, AL.)

MC 146646 (Sub-77F), filed January 8, 1980. Applicant: BRISTOW TRUCKING CO., a corporation, P.O. Box 6355A, Birmingham, AL 35217. Representative: James W. Segrest (same address as applicant). Transporting *non-ferrous scrap metals,* between points in and east of ND, SD, NE, KS, OK, and TX. Condition: Person or persons who appears to be engaged in common control of applicant and another regulated carrier must either file an application under 49 U.S.C. 11343(A) of the Interstate Commerce Act, or submit an affidavit indicating why such approval is unnecessary. (Hearing site: Omaha, NE, or Birmingham, AL.)

MC 146646 (Sub-78F), filed January 11, 1980. Applicant: BRISTOW TRUCKING CO., a corporation, P.O. Box 6355A, Birmingham, AL 35217. Representative: James W. Segrest (same address as applicant). Transporting (1) *furniture, furniture parts, components, and accessories thereto,* and (2) *materials, equipment and supplies* used in the manufacture, sale and distribution of the commodities in (1) above, between Birmingham, AL, on the one hand, and, on the other, points in the United States (except AK and HI). Condition: Person or persons who appears to be engaged in common control of applicant and another regulated carrier must either file an application under 49 U.S.C. 11343(A) of the Interstate Commerce Act, or submit an affidavit indicating why such approval is unnecessary. (Hearing site: Montgomery, or Birmingham, AL.)

MC 146646 (Sub-79F), filed January 11, 1980. Applicant: BRISTOW TRUCKING CO., a Corporation, P.O. Box 6355A, Birmingham, AL 35217. Representative: James W. Segrest (same address as applicant). Transporting *laminated beams and arches and wood decking,* from El Dorado Springs, MO, to points in IN, IL, OK, TN, AR, OH, and WY. Condition: Person or persons who appears to be engaged in common control of applicant and another regulated carrier must either file an application under 49 U.S.C. 11343(A) of the Interstate Commerce Act, or submit an affidavit indicating why such approval is unnecessary. (Hearing site: Joplin, MO, or Birmingham, AL.)

MC 146927 (Sub-8F), filed January 18, 1980. Applicant: DIXIE TRANSPORT, INC., P.O. Box 1126, Hattiesburg, MS 39401. Representative: William P. Jackson, Jr., 3426 N. Washington Blvd., P.O. Box 1240, Arlington, VA 22210. Transporting *printing paper and wood pulp,* from the facilities of SCM Allied Paper, Inc., at or near Jackson, AL, to points in MS, LA, TX, and FL. (Hearing site: Washington, DC.)

MC 147647 (Sub-3F), filed January 10, 1980. Applicant: LOUIE R. PARRISH, AND ALICE R. PARRISH, d.b.a. PARRISH TRUCK LINE, a Partnership, Airport Rd., P.O. Box 762, Monticello, AR 71655. Representative: Donald B. Morrison, 1500 Deposit Guaranty Plaza, P.O. Box 22628, Jackson, MS 39205. Over *regular routes,* transporting *general commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment) (1) between Memphis, TN and Warren, AR: From Memphis, TN over Interstate Hwy 40 and/or U.S. Hwy 70 to its intersection with AR Hwy 11; then over AR Hwy 11 to its intersection with U.S. Hwy 79 at Stuttgart, AR, then over U.S. Hwy 79 to Pine Bluff, AR; then over U.S. Hwy 65 to its intersection with U.S. Hwy 165 at Dermott, AR; then over U.S. Hwy 165 to its intersection with AR Hwy 35, then over AR Hwy 35 to its junction with AR Hwy 4 at Monticello, AR then over AR Hwy 4 to Warren, AR, and return over the same routes, serving all intermediate points between Pine Bluff and Warren, AR, except Pine Bluff, AR (2) between Pine Bluff, AR and Monticello, AR: From Pine Bluff, AR over U.S. Hwy 65 to its junction with AR Hwy 81, then over AR Hwy 81 to the junction of AR Hwy 81 and AR Hwy 4 near Monticello, AR, and return over the same routes, serving all intermediate points, except Pine Bluff, AR, (3) between Memphis, TN and Stuttgart, AR: From Memphis, TN over Interstate Hwy 40 to its junction with U.S. Hwy 79 at Lehi, AR; then over U.S. Hwy 79 to Stuttgart, AR, serving no intermediate points, as an alternate route for operating convenience only, (4) serving the facilities of Potlach Corporation at or near Rohwer, AR, as an off-route point, and (5) serving Hermitage, AR as an off-route point. (Hearing site: Memphis, TN, or Little Rock, AR.)

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Decided: March 5, 1980.

By the Commission, Review Board Number 3, Members Parker, Fortier and Hill

MC 11207 (Sub-524F), filed February 7, 1980. Applicant: DEATON, INC., 317 Ave. W, P.O. Box 938, Birmingham, AL 35201. Representative: Kim D. Mann, Suite 1010, 7101 Wisconsin Ave., Washington, DC 20014. Transporting *general commodities* (except those of unusual value, commodities in bulk, household goods as defined by the Commission, classes A and B explosives, frozen foods, and commodities which because of size or weight require the use of special equipment), between the facilities of Yellow Creek Port and Industrial Area, in Tishomingo and Alcorn Counties, MS, on the one hand, and, on the other, points in TX. (Hearing site: Memphis, TN, or Washington, DC.)

MC 11207 (Sub-525F), filed February 7, 1980. Applicant: DEATON, INC., 317 Ave. W, P.O. Box 938, Birmingham, AL 35201. Representative: Kim D. Mann, Suite 1010, 7101 Wisconsin Ave., Washington, DC 20014. Transporting *general commodities* (except those of unusual value, commodities in bulk, household goods as defined by the Commission, classes A and B explosives, frozen foods, and commodities which because of size or weight require the use of special equipment), between the facilities of Yellow Creek Port and Industrial Area, in Alcorn County, MS, on the one hand, and, on the other, points in AL, MS, and TN. (Hearing site: Memphis, TN, or Washington, DC.)

MC 30867 (Sub-214F), filed February 5, 1980. Applicant: CENTRAL FREIGHT LINES, INC., 5601 West Waco Dr., Waco, TX 76703. Representative: Phillip Robinson, P.O. Box 2207, Austin, TX

78768. Transporting *general commodities* (except those of unusual value, household goods as defined by the Commission, commodities in bulk and commodities requiring special equipment) (1) between Stephenville, TX and Wichita Falls, TX over US Hwy 281; and (2) between Santo, and Fort Worth, TX: (a) over US Hwy 80 and Interstate Hwy 20, and (b) from Santo over TX Ranch Road 2201 to junction with US Hwy 281, then over US Hwy 281 to junction with US Hwy 180, then over US Hwy 180 to Fort Worth, and return over the same route, serving all intermediate points on routes (1) and (2) above. (Hearing site: Dallas, TX.)

MC 42487 (Sub-979F), filed February 11, 1980. Applicant: CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, 175 Linfield Dr., Menlo Park, CA 94025. Representative: V. R. Oldenburg, P.O. Box 3062, Portland, OR 97208. Over regular routes, transporting *general commodities (except those of unusual* value, classes A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, assembled automobiles and heavy machinery requiring special equipment for handling), between Indianapolis, IN and Bloomington, IL: over Interstate Hwy 74, serving no intermediate points, as an alternate route for operating convenience only in connection with carrier's otherwise authorized regular-route operations. Note: The proposed authority will tack with present authority of Applicant at Indianapolis, IN and Bloomington, IL. These authorities, in turn, will be joined with other authorities of applicant serving points throughout the United States. (Hearing site: Chicago, IL.)

MC 42487 (Sub-980F), filed February 13, 1980. Applicant: CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, 175 Linfield Drive, Menlo Park, CA 94025. Representative: V. R. Oldenburg, P.O. Box 3062, Portland, OR 97208. Over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk and commodities requiring special equipment), (1) between Perry, GA and Ocala, FL, serving the intermediate points of Cordele, Tifton, and Valdosta, GA and Lake City and Gainesville, FL: from Perry over U.S. Hwy 41 to Lake City, FL, then over U.S. Hwy 441 to Ocala, and return over the same route. (2) between Gainesville, FL and Waldo, FL, serving no intermediate points, over FL Hwy 24, (3) between Macon, GA and Monticello, FL, serving the intermediate points of Americus, Albany and Thomasville, GA, and serving the junction of U.S. Hwy 80 and U.S. Hwy 19 for purpose of joinder only: from Macon over U.S. Hwy 80 to junction U.S. Hwy 19, then over U.S. Hwy 19, to junction U.S. Hwy 319 then over U.S. Hwy 319 to Thomasville, GA, then over Business U.S. Hwy 19 to junction U.S. Hwy 19 near Thomasville, GA, then over U.S. Hwy 19 to Monticello, FL and return over the same route, (4) between Americus, GA and Cordele, GA, serving no intermediate points over U.S. Hwy 280, (5) between Albany, GA and Tifton, GA, serving no intermediate points, over U.S. Hwy 82, (6) between Dothan, AL and Valdosta, GA, serving the intermediate points of Bainbridge and Thomasville, GA over U.S. Hwy 84, (7) between Thomasville, GA and Tifton, GA, serving the intermediate point of Moultrie, GA, over U.S. Hwy 319, (8) between Atlanta, GA and junction U.S. Hwy 80 and U.S. Hwy 19, serving the intermediate points of Newman, La Grange and Columbus, GA, and the facilities of West Point-Pepperell, Inc., at or near La Grange, GA as either an intermediate or off-route point: from Atlanta over U.S. Hwy 29 to La Grange, GA, then over U.S. Hwy 27 to Columbus, GA, then over U.S. Hwy 80 to junction U.S. Hwy 80 and U.S. Hwy 19, and return over the same route, (9) between La Grange, GA and Opelika, AL, serving the intermediate points of West Point, GA and Lanett, Shawmut, Langdale and Fairfax, AL, and the facilities of West-Point Pepperell, Inc., at or near West Point, GA and Lanett, Shawmut, Langdale, Fairfax, Huguley, Riverview and Opelika, Al as either intermediate or off-route points, over U.S. Hwy 29, (10) between Columbus, GA and Opelika, Al, serving no intermediate points, but serving the facilities of West-Point Pepperell at or near Opelika, AL as either an intermediate or off-route point, over U.S. Hwy 280, (11) between Valdosta, GA and Savannah, GA, serving the intermediate points of Waycross, GA: from Valdosta over U.S. Hwy 84 to Waycross, GA, then over U.S. Hwy 82 to junction U.S. Hwy 17, then over U.S. Hwy 17 to Savannah, and return over the same route. (12) between Griffin, GA and junction U.S. Hwy 19 and U.S. Hwy 80, serving no intermediate points, over U.S. Hwy 19 serving Byron, Fort Valley, Reynolds and Thomaston, GA as off-route points in connection with routes described above. Note: Applicant intends to tack the authorities described above and any existing or future authority. (Hearing site: Atlanta, GA.)

MC 55896 (Sub-134F), filed February 11, 1980. Applicant: R-W SERVICE SYSTEM, INC., 20225 Goddard Rd., Taylor, MI 48180. Representative: George E. Batty (same address as applicant). Transporting *sand* on skids or skidded containers, (except commodities in bulk, in tank vehicles), from the Acme Resin Corporation, at Oregon, IL, to points in IA, WI, MO, MN, KY, PA, OH, MI, and IN. (Hearing site: Chicago, IL.)

MC 59247 (Sub-12F), filed February 11, 1980. Applicant: LINDEN MOTOR FREIGHT COMPANY, INC., 1500 Lower Rd., Linden, NJ 07036. Representative: William Biederman, 371 7th Ave., New York, NY 10001. Transporting (1) *chemicals,* and (2) *such commodities* as are used in the manufacture and distribution of chemical products (except chemicals in bulk, in tank vehicles), from points in DE, MD, and those in that part of PA east of a line beginning at the NY–PA State line and extending along U.S. Hwy 11 to Harrisburg, PA, and then along Interstate Hwy 83 to the PA–MD State line, to points in NJ. (Hearing site: New York, NY, or Washington, DC.)

MC 63417 (Sub-269F), filed February 11, 1980. Applicant: BLUE RIDGE TRANSFER COMPANY, INCORPORATED, P.O. Box 13447, Roanoke, VA 24034. Representative: William E. Bain (same address as applicant). Transporting *glass containers, container ends, and closures,* from points in Armstrong, Clarion, Forest, and Clearfield Counties, PA, to points in DE, GA, NC, SC, TN, and VA. (Hearing site: Washington, DC.)

MC 69116 (Sub-262F), filed February 20, 1980. Applicant: SPECTOR INDUSTRIES, INC., d.b.a. SPECTOR FREIGHT SYSTEM, 1050 Kingery Hwy, Bensenville, IL 60106. Representative: Edward G. Bazelon, 39 South LaSalle St., Chicago, IL 60603. Transporting *general commodities* (except Classes A and B explosives and commodities in bulk), between the facilities of Kimberly-Clark Corporation located in Richmond County, GA, on the one hand, and, on the other, those points in the United States in and east of ND, SD, NE, CO, and NM, restricted to the transportation of traffic originating at or destined to the facilities of Kimberly-Clark Corporation, in Richmond County, GA. (Hearing site: Chicago, IL.)

MC 78687 (Sub-103F), filed February 5, 1980. Applicant: LOTT MOTOR LINES, INC., West Cayuga St., P.O. Box 751, Moravia, NY 13118. Representative: E. Stephen Heisley, 805 McLachlen Bank Bldg., 666 11th St. NW., Washington, DC 20001. Transporting *aluminum and*

aluminum articles, from the facilities of Kaiser Aluminum & Chemical Corporation, at or near Ravenswood, WV, to points in the United States in and east of MN, IA, MO, AR, and TX. (Hearing site: Washington, DC.)

MC 78687 (Sub-104F), filed February 12, 1980. Applicant: LOTT MOTOR LINES, INC., West Cayuga St., P.O. Box 751, Moravia, NY 13118. Representative: E. Stephen Heisley, 805 McLachlen Bank Bldg., 666 11th St. NW., Washington, DC 20001. Transporting *fly ash,* in bulk, in tank vehicles, (1) from Indiana, Schelocta, Homer City, and Huff, PA, to points in NY, OH, DE, VA, WV, IN, VT, MA, CT, and (2) between points in NY, restricted in (1) above to prior or subsequent movements by rail. (Hearing site: Washington, DC.)

MC 98776 (Sub-7F), filed February 6, 1980. Applicant: ELDRIDGE TRUCK LINE, INC., P.O. Box 659, Somerset, KY 42501. Representative: Robert H. Kinker, 314 West Main St., P.O. Box 464, Frankfort, KY 40602. Transporting *general commodities* (except those of unusual value classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment), serving points in IL within the commercial zone of Louisville, KY in connection with applicant's presently authorized regular-route operations. (Hearing site: Louisville, KY.)

NOTE.—Applicant states it will tack at Louisville, KY.

MC 103926 (Sub-103F), filed February 4, 1980. Applicant: W. T. MAYFIELD SONS TRUCKING CO., INC., P.O. Box 947, Mableton, GA 30059. Representative: K. Edward Wolcott, P.O. Box 56387, 1200 Gas Light Tower, 235 Peachtree St. NE., Atlanta, GA 30343. Transporting (1) *construction, mining or quarry machinery and equipment,* (2) *industrial plant machinery and equipment,* and (3) *attachments, accessories, and supplies* for the commodities in (1) and (2) above, (except commodities in bulk), between points in the United States (except AK and HI), restricted to the transportation of traffic originating at or destined to the facilities of Vulcan Materials Co. (Hearing site: Atlanta, GA, or Birmingham, AL.)

MC 107576 (Sub-28F), filed February 11, 1980. Applicant: SILVER WHEEL FREIGHTLINES, INC., 1321 S.E. Water Ave., Portland, OR 97214. Representative: Ben D. Browning (same address as applicant). Over regular routes, transporting general commodities (except those of unsual value, household goods as defined by the Commission, classes A and B explosives, commodities in bulk, in tank vehicles, and those requiring special equipment), (1) between Seattle and Walla Walla, WA, serving intermediate and off-route points in Kittitas, Yakima, Benton, Franklin, and Walla Walla Counties, WA, from Seattle over Interstate Hwy 90 to junction U.S. Hwy 97, then over U.S. Hwy 97 to junction U.S. Hwy 12, then over U.S. Hwy 12 to Walla Walla, and return over the same route, (2) between Goldendale, WA, and ports of entry on the international boundary line between the United States and Canada near Oroville, WA, serving intermediate and off-route points in Yakima, Kittitas, Chelan, Douglas and Okanogan Counties, WA, over U.S. Hwy 97, (3) between Plymouth, WA and junction U.S. Hwy 2 and U.S. Hwy 97, serving intermediate and off-route points in Benton, Franklin, Adams, Grant, Douglas, and Chelan Counties, WA, from Plymouth over WA Hwy 14 to junction U.S. Hwy 12, then over U.S. Hwy 12 to junction U.S. Hwy 395, then over U.S. Hwy 395 to junction WA Hwy 17, then over WA Hwy 17 to junction Interstate Hwy 90, then over Interstate Hwy 90 to junction WA Hwy 281, then over WA Hwy 281 to junction WA Hwy 28, then over WA Hwy 28 to junction U.S. Hwy 2, then over U.S. Hwy 2 to junction U.S. Hwy 97, and return over the same route, and (4) between Ellensburg, WA and junction U.S. Hwy 195 and U.S. Hwy 95, serving intermediate and off-route points in Grant, Kittitas, Spokane and Whitman Counties, WA, over Interstate Hwy 90 to junction U.S. Hwy 195, then over U.S. Hwy 196 to U.S. Hwy 95, and return over the same route. (Hearing site: Portland and Eugene, OR.)

MC 114457 (Sub-563F), filed February 7, 1980. Applicant: DART TRANSIT COMPANY, a corporation, 2102 University Ave., St. Paul, MN 55114. Representative: James H. Wills, 2102 University Ave., St. Paul, MN 55114. Transporting *foodstuffs,* in vehicles equipped with mechanical refrigeration (except commodities in bulk), from the facilities of Delaware Freezer Center, Newark, DE, to points in the United States in and east of ND, SD, NE, KS, OK, and TX. (Hearing site: Louisville, KY, or St. Paul, MN.)

MC 114457 (Sub-564F), filed February 7, 1980. Applicant: DART TRANSIT COMPANY, a corporation, 2102 University Ave., St. Paul, MN 55114. Representative: James H. Wills (same address as applicant). Transporting *foodstuffs* (except commodities in bulk), from the facilities of M&M/MARS Snack-Master Division, at Albany, GA, to points in AZ, CA, CO, FL, IL, IN, LA, MA, MD, MI, MN, MO, NC, NJ, OH, OR, PA, TN, TX, and UT. (Hearing site: Atlanta, GA, or St. Paul, MN.)

MC 117786 (Sub-95F), filed February 4, 1980. Applicant: RILEY WHITTLE, INC., P.O. Box 19038, Phoenix, AZ 85005. Representative: A. Michael Bernstein, 1441 E. Thomas Rd., Phoenix, AZ 85014. Transporting *fabric reinforced rubber hose and rubber products,* from points in OH to points in CA, GA and FL (Hearing site: Phoenix, AZ.)

MC 119656 (Sub-73F), filed February 14, 1980. Applicant: NORTH EXPRESS, INC., 219 Main St., Winamac, IN 46996. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. Transporting (1) *lumber and lumber products,* between points in IN, on the one hand, and, on the other, points in IL; and (2) *kiln dried lumber, dimension parts, and rough sawed lumber,* between points in Starke County, IN, on the one hand, and, on the other, points in MI, WI, KY, OH, and MO. (Hearing site: Indianapolis, IN.)

MC 123407 (Sub-632F), filed February 5, 1980. Applicant: SAWYER TRANSPORT, INC., Sawyer Center, Rt. #1, Chesterton, IN 46304. Representative: H. E. Miller, Jr. (same address as applicant). Transporting *such commodities* as are dealt in or used by home improvement centers, between points in the United States (except AK and HI), restricted to the transportation of traffic originating at or destined to the facilities of Color Tile Corp. (Hearing site: Dallas, TX.)

MC 123407 (Sub-633F), filed February 8, 1980. Applicant: SAWYER TRANSPORT, INC., Sawyer Center, Rt. #1, Chesterton, IN 46304. Representative: H. E. Miller, Jr. (same address as applicant). Transporting *flat glass,* from Houston, TX, to points in CA. (Hearing site: Houston, TX.)

MC 123476 (Sub-54F), filed February 19, 1980. Applicant: CURTIS TRANSPORT, INC., P.O. Box 388, Arnold, MO 63010. Representative: David G. Dimit (same address as applicant). Transporting *plastic products,* between Maryland Heights, MD, on the one hand, and, on the other, those points in the United States on and east of U.S. Hwy 85. (Hearing site: St. Louis, MO, or Springfield, IL.)

MC 124887 (Sub-111F), filed February 13, 1980. Applicant: SHELTON TRUCKING SERVICE, INC., Rt. #1, Box 230, Altha, FL 32421. Representative: Sol H. Proctor, 1101 Blackstone Bldg., Jacksonville, FL 32202. Transporting (1) *brick and title,* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the

commodities in (1) above, between Kentwood, LA, and points in AL, AR, FL, GA, NC, TN, TX, SC, and MS. (Hearing site: Jacksonville or Tallahassee, FL.)

MC 128837 (Sub-16F), filed February 4, 1980. Applicant: TRUCKING SERVICE, INC., P.O. Box 229, Carlinville, IL 62626. Representative: Robert T. Lawley, 300 Reisch Bldg., Sprinfield, IL 62701. Transporting *glass bottles,* from Joliet, IL, to points in KY, and Iowa City and Cedar Rapids, IA, Paw Paw, Livonia, Fremont and Detroit, MI, St. Louis and Weston, MO, restricted to the transportation of traffic originating at the facilities of National Bottle Company, at Joliet, IL. (Hearing site: Chicago, IL.)

MC 128837 (Sub-17F), filed February 4, 1980. Applicant: TRUCKING SERVICE, INC., P.O. Box 229, Carlinville, IL 62626. Representative: Robert T. Lawley, 300 Reisch Bldg., Springfield, IL 62701. Transporting *fibrous glass products, mineral wool, mineral wool products, insulated and flexible air ducts, insulating products, fibre rovings, yarn and strands,* and *glass fibre mats and matting,* (except commodities in bulk), (a) from Pauline, Olathe, Lenexa and Kansas City, KS and Kansas City, MO, to points in IL, IN, IA, MI, MN, NE, and WI, and (b) from Bensenville, IL, to points in IN, IA, MI, NE, OH, and WI. (Hearing site: Chicago, IL.)

MC 134286 (Sub-159F), filed February 11, 1980. Applicant: ILLINI EXPRESS, INC., P.O. Box 1564, Sioux City, IA 51102. Representative: Julie Humbert (same address as above). Transporting *foodstuffs* (except in bulk), from the facilities of M&M/Mars, Snack-master Division, at or near Albany, GA, to points in CA, CO, FL, GA, IL, IN, MA, MD, MI, MN, MO, NC, NJ, OH, OR, TN, TX, and UT. (Hearing site: Atlanta, GA, or Denver, CO.)

MC 134286 (Sub-160F), filed February 11, 1980. Applicant: ILLINI EXPRESS, INC., P.O. Box 1564, Sioux City, IA 51102. Representative: Julie Humbert (same address as above). Transporting *meats, meat products, meat byproducts, and articles distributed by meat packing houses* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766 (except hides and commodities in bulk, in tank vehicles), from the facilities of Tama Meat Packing, Inc., at or near Tama, IA, to points in the US (except AK and HI), restricted to the transportation of traffic originating at the named origin and destined to the named destinations. (Hearing site: Sioux City, IA, or Denver, CO.)

MC 134286 (Sub-161F), filed February 11, 1980. Applicant: ILLINI EXPRESS, INC., P.O. Box 1564, Sioux City, IA 51102. Representative: Julie Humbert (same address as above). Transporting (1) *cleaning, buffing, or polishing compounds,* (2) *textile softeners,* (3) *lubricants,* (4) *hypochlorite solutions,* (5) *deodorants or disinfectants,* and (6) *paints, stains, or varnishes,* (except commodities in bulk), in vehicles equipped with mechanical refrigeration, (a) from the facilities of Economics Laboratory, Inc., at Joliet, IL, to points in IA, NE, MN, MO, KS, CO, OH, and MI, and (b) between the facilities of Economics Laboratory, Inc., at Joliet, IL, on the one hand, and, on the other, Avenel and Woodbridge, NJ, restricted to the transportation of traffic originating at and destined to points in the described territories. (Hearing site: Minneapolis, MN, or Denver, CO.)

MC 134286 (Sub-162F), filed February 13, 1980. Applicant: ILLINI EXPRESS, INC., P.O. Box 1564, Sioux City, IA 51102. Representative: Julie Humbert (same address as above). Transporting (1) *alcoholic liquors,* and (2) *materials, equipment and supplies* used in the manufacture and distribution of commodities in (1) above (except in bulk, in tank vehicles), (a) between Ft. Smith, AR, on the one hand, and, on the other, points in the US (except AK and HI), (b) between Bardstown and Louisville, KY, on the one hand, and, on the other, points in AR, IL, IN, MI, OH, NY, PA, NC, and GA, (c) between New Orleans, LA, on the one hand, and, on the other, points in AZ, CA, NM, TX, AR, and GA, and (d) between Plainfield, IL, on the one hand, and, on the other, points in WI, MI, IN, MN, IA, MO, ND, SD, NE, KS, OK, MT, WI, CO, and NM, restricted to the transportation of traffic originating at or destined to the facilities of Hiram Walker & Sons, Inc. (Hearing site: Ft. Smith, AR, or New Orleans, LA.)

MC 134467 (Sub-58F), filed February 4, 1980. Applicant: POLAR EXPRESS, INC., P.O. Box 845, Springdale, AR 72764. Representative: Charles M. Williams, 350 Capitol Life Center, 1600 Sherman St., Denver, CO 80203. Transporting (1) *alcoholic liquors,* and (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk, in tank vehicles), (a) between Ft. Smith, AR, on the one hand, and, on the other, points in the United States (except AK and HI), (b) between Bardstown and Louisville, KY, on the one hand, and, on the other, points in AR, IL, MI, OH, NY, LA, PA, GA, NC, SC, and FL, (c) between New Orleans, LA, on the one hand, and, on the other, points in AZ, CA, OK, AR, MI, TX, NM, MS, AL, GA, FL, IL, and KY, and (d) between Plainfield, IL, on the one hand, and, on the other, points in MI, WI, MN, IA, MO, NE, KS, OK, CO, NM, AR, LA, and KY, restricted to the transportation of traffic originating at or destined to facilities of Hiram Walker & Sons, Inc. (Hearing site: Chicago, IL, or St. Louis, MO.)

MC 134477 (Sub-404F), filed February 8, 1980. Applicant: SCHANNO TRANSPORTATION, INC., 5 West Mendota Rd., West St. Paul, MN 55118. Representative: Thomas D. Fischbach, P.O. Box 43496, St. Paul, MN 55164. Transporting *Alcoholic beverages, cocktail mixes and bitters,* (except malt beverages and commodities in bulk), from points in CA, IL, IN, KY, MD, MI, NJ, OH, PA, and TN, to Fargo and Bismarck, ND. (Hearing site: St. Paul, MN.)

MC 134477 (Sub-405F), filed February 11, 1980. Applicant: SCHANNO TRANSPORTATION, INC., 5 West Mendota Rd., West St. Paul, MN 55118. Representative: Thomas D. Fischbach, P.O. Box 43496, St. Paul, MN 55164. Transporting *meats, meat products, meat byproducts, and articles distributed by meat packing houses* as described in Sections A and C of Appendix I to report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from St. Cloud, MN, to points in AL, AR, CT, DE, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MS, MO, NE, NH, NJ, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, VT, VA, WV, WI, and DC. (Hearing site: St. Paul, MN.)

MC 136246 (Sub-41F), filed February 8, 1980. Applicant: GEORGE BROS., INC., P.O. Box 492, Sutton, NE 68979. Representative: Arlyn L. Westergren, Suite 106, 7101 Mercy Rd., Omaha, NE 68106. Transporting pneumatic conveyor equipment, parts and accessories and such commodities as are used in the manufacture and production of the aforementioned commodities, between the facilities of Cyclonaire Corp., at Henderson, NE, on the one hand, and, on the other, points in the U.S. (except AK and HI). (Hearing site: Omaha, NE.)

MC 136246 (Sub-42F), filed February 8, 1980. Applicant: GEORGE BROS., INC., P.O. Box 492, Sutton, NE 68979. Representative: Arlyn L. Westergren, Suite 106, 7101 Mercy Rd., Omaha, NE 68106. Transporting, *iron and steel articles,* from points in IN and OH, to the facilities of Sperry-Vickers, Division of Sperry Corporation, at Omaha, NE. (Hearing site: Omaha, NE.)

MC 142007 (Sub-1F), filed February 12, 1980. Applicant: OTTE BUS SERVICE, INC., Route #1, Cedar Grove, WI 53013. Representative: Bruce E. Mitchell, Suite 520, Lenox Towers South, 3390 Peachtree Rd., N.E., Atlanta, GA 30326. Transporting *passengers and their baggage,* in the same vehicle with passengers, in charter and special operations, between points in Ozaukee, Sheboygan and Washington Counties, WI, on the one hand, and, on the other, points in the U.S. (except HI). (Hearing site: Washington, DC.)

MC 139006 (Sub-15F), filed February 5, 1980. Applicant: RAPIER SMITH, R.R. #5, Loretto Rd., Bardstown, KY 40004. Representative: Robert H. Kinker, 314 West Main St., P.O. Box 464, Frankfort, KY 40602. Transporting (1) *alcoholic liquors and* (2) *materials, equipment, and supplies* used in the manufacture and distribution of alcoholic liquors, (except commodities in bulk, in tank vehicles), between Fort Smith, AR, New Orleans, LA, Bardstown and Louisville, KY, and Plainfield, IL, on the one hand, and, on the other, those points in the United States in and east of MN, IA, MO, KS, OK, and TX, restricted to the transportation of traffic originating at or destined to facilities used by Hiram Walker & Sons, Inc. (Hearing site: Louisville, KY.)

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Decided: March 5, 1980.

By the Commission, Review Board Number 3, Members Parker, Fortier and Hill.

MC 11207 (Sub-518F), filed January 22, 1980. Applicant: DEATON, INC., 317 Ave. W, P.O. Box 938, Birmingham, AL 35201. Representative: Kim D. Mann, Suite 1010, 7101 Wisconsin Ave., Washington, DC 20014. Transporting (1) *metal buildings, knocked down,* and (2) *machinery, materials, equipment and supplies* used in the manufacture of the commodities in (1) above, between the facilities of Republic Buildings Corp., at Rainsville, AL, on the one hand, and, on the other, points in AZ, AR, FL, GA, IL, KY, LA, MO, MS, NV, NM, NC, OH, OK, SC, TN, TX, VA, and WV. (Hearing site: Birmingham, AL, or Washington, DC.)

MC 51146 (Sub-805F), filed January 22, 1980. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: Matthew J. Reid, Jr., (same address as applicant). Transporting *salt,* in packages, from the facilities of Morton Salt at or near Chicago, IL, to points in IN, IA, MI, MO, and WI. (Hearing site: Chicago, IL.)

MC 51146 (Sub-806F), filed January 22, 1980. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: Matthew J. Reid, Jr., (same address as applicant). Transporting *such commodities as are dealt in, or used by, manufacturers and distributors of plastic, plastic products, coated mill products, chemicals, and magnesium alloy engraving plates* (except commodities in bulk), between the facilities of Dow Chemical Corp. at Findlay, OH, on the one hand, and, on the other, points in the United States in and east of ND, SD, NE, KS, OK, and TX. (Hearing site: Chicago, IL.)

MC 51146 (Sub-808F), filed January 24, 1980. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: Matthew J. Reid, Jr. (same address as applicant). Transporting *roving, yarn, and glass fibre,* between the facilities of Owens-Corning Fiberglas Corp., at Jackson, TN, on the one hand, and, on the other, points in IL, IN, OH, MI, MN, and WI.

MC 51146 (Sub-809F), filed January 24, 1980. Applicant: SCHNEIDER TRANSPORT INC., P.O. Box 2298. Green Bay, WI 54306. Representative: Matthew J. Reid, Jr. (same address as applicant). Transporting (1) *agricultural pesticides, medicinal feeding compounds, chemicals, drugs, and medicines, and* (2) *materials, equipment, and supplies* used or useful in the manufacture, processing, sale, and distribution of the commodities named in (1) above, between Kalamazoo, MI, on the one hand, and, on the other, points in the United States (except AK and HI), restricted to the transportation of traffic originating at or destined to the facilities of The Upjohn Company. (Hearing site: Chicago, IL.)

MC 59306 (Sub-7F), filed January 22, 1980. Applicant: NIEDERGERKE TRUCK LINE, INCORPORATED, 107 West Fourth St., Fulton, MO 65215. Representative: Neal A. Jackson, 1156 15th St., N.W., Washington, D.C. 20005. Over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between Vandalia and Martinsburg, MO: from Vandalia over U.S. Hwy 54 to junction MO Hwy 19, then over MO Hwy 19 to Martinsburg, and return over the same route, serving Farber, MO, as an intermediate point, and (2) between Vandalia, MO, and junction U.S. Hwy 61 and 40 at Wentzville, MO: from Vandalia over U.S. Hwy 54 to junction U.S. Hwy 61, then over U.S. Hwy 61 to junction U.S. Hwy 40 at Wentzville, MO, and return over the same route, serving Wentzville, MO, for joinder purposes only. (Hearing site: St. Louis, MO, or Washington, DC.)

MC 61396 (Sub-382F), filed January 22, 1980. Applicant: HERMAN BROS., INC., 2565 St. Marys Ave., P.O. Box 189, Omaha, NE 68101. Representative: Gerald A. Noel (same address as applicant). Transporting *cement,* from the facilities of Marquette Cement Company, at Memphis, TN, to points in MS, AR, and AL. (Hearing site: Omaha, NE, or Memphis, TN.)

MC 65626 (Sub-36F), filed January 31, 1980. Applicant: FREDONIA EXPRESS, INC., P.O. Box 222, Fredonia, NY 14063. Representative: E. Stephen Heisley, 805 McLachlen Bank Bldg., 666 Eleventh St., NW., Washington, DC 20001. Transporting *such commodities as are dealt in by manufacturers of glass, plastic, metal and earthenware containers and products, and materials, equipment and supplies* used in the manufacture and distribution of the foregoing commodities, between points in NJ, NY, PA, and WV. (Hearing site: Washington, DC, or New York, NY.)

MC 95876 (Sub-337F), filed January 21, 1980. Applicant: ANDERSON TRUCKING SERVICE, INC., 203 Cooper Ave. No., St. Cloud, MN 56301. Representative: William L. Libby (same address as applicant). Transporting (1) *sewage treatment plants, aerators, lift stations, and* (2) *parts and accessories* used in the installation of commodities in (1) above, from the facilities of Clow Corporation, at or near Richwood, KY, to points in the United States (except AK and HI). (Hearing site: Chicago, IL, or Minneapolis, MN.)

MC 95876 (Sub-338F), filed January 22, 1980. Applicant: ANDERSON TRUCKING SERVICE, INC., 203 Cooper Ave. No., St. Cloud, MN 56301. Representative: William L. Libby (same address as applicant). Transporting (1) *iron and steel articles,* from the facilities of Northwestern Steel and Wire Co., at or near Rock Falls and Sterling, IL, to points in AR, AZ, CA, CO, IA on and east of U.S. Hwy 69, ID, KS, LA, MO, MS, MT, NM, NV, OK, OR, TX, UT, WA, and WY, and (2) *materials and supplies* used in the manufacture and distribution of iron and steel articles (except commodities in bulk), in the reverse direction, restricted in (1) above to the transportation of traffic originating at the named facilities. (Hearing site: Chicago, IL, or Minneapolis, MN.)

MC 109376 (Sub-21F), filed January 22, 1980. Applicant: SKINNER TRANSFER CORP., P.O. Box 284, Reedsburg, WI 53959. Representative: Richard A. Westley, 4506 Regent St., Suite 100, Madison, WI 53705. Transporting *agricultural limestone,* from Sussex, WI,

to points in MN and the Upper Peninsula of MI. (Hearing site: Milwaukee, WI, or Chicago, IL.)

MC 111656 (Sub-12F), filed January 25, 1980. Applicant: FRANK LAMBIE, INC., Pier 79 No. River, New York, NY 10018. Representative: John L. Alfano, 550 Mamaroneck Ave., Harrison, NY 10528. Contract carrier, transporting *such commodities as are dealt in by manufacturers and distributors of paint products, food and food products, powder metals and metal products, paper and paper products, and supplies and equipment* used in connection with the foregoing commodities (except commodities in bulk), between points in the United States (except AK and HI), under continuing contract(s) with SCM Corporation, of Cleveland, OH. (Hearing site: New York,NY.)

MC 111956 (Sub-54F), filed January 24, 1980. Applicant: SUWAK TRUCKING COMPANY, a Corporation, 1105 Fayette St., Washington, PA 15301. Representative: Henry M. Wick, Jr.; 2310 Grant Bldg., Pittsburgh, PA 15219. Transporting *general commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), in containers and trailers, between points in DE, MD, NY, NJ, PA and VA, on the one hand, and, on the other, points in WV, restricted to the transportation of traffic having a prior or subsequent movement by water in foreign commerce. (Hearing site: Washington, DC, or Pittsburg, PA.)

MC 112617 (Sub-466F), filed January 21, 1980. Applicant: LIQUID TRANSPORTERS, INC., 1292 Fern Valley Rd., P.O. Box 21395, Louisville, KY 40221. Representative: Larry W. Thompson (same address as applicant). Transporting *liquid lard*, in bulk, in tank vehicles, from Owensboro, KY, to points in IL, MO, and TN. (Hearing site: Louisville, KY, or Washington, DC.)

MC113106 (Sub-88F), filed January 23, 1980. Applicant: THE BLUE DIAMOND COMPANY, a corporation, 4401 East Fairmount Ave., Baltimore, MD 21224. Representative: Chester A. Zyblut, 366 Executive Bldg., 1030 Fifteenth St., N.W., Washington, DC 20005. Transporting *glass containers*, from Marienville, Knox, Parker, Clarion, and Elk City, PA, to points in MD, VA, DE, NJ, NY, and DC. (Hearing site: Washington, DC.)

MC115826 (Sub-572F), filed January 22, 1980. Applicant: W. J. DIGBY, INC., 6015 West 58th Ave., Commerce City, CO 80022. Representative: Howard Gore (same address as applicant). Transporting *alcoholic beverages*, from Peoria, IL, and Detroit, MI to points in CO. (Hearing site: Denver, CO.

MC115826 (Sub-573F), filed January 22, 1980. Applicant: W. J. DIGBY, INC., 6015 East 58th Ave., Commerce City, CO 80022. Representative: Howard Gore (same address as applicant). Transporting *alcoholic beverages and materials, equipment and supplies* used in the manufacture and distribution of alcoholic beverages, between Ft. Smith, AR, Bardstown and Louisville, KY, New Orleans, LA, and Plainfield, IL, on the one hand, and, on the other, points in the United States (except AK and HI), restricted to the transportation of traffic originating at or destined to the facilities of Hiram Walker & Sons, Inc. (Hearing site: Denver, CO.)

MC115826 (Sub-574F), filed January 25, 1980. Applicant: W. J. DIGBY, INC., 6015 East 58th Ave., Commerce City, CO 80022. Representative: Howard Gore (same address as applicant). Transporting (1) *sodium bicarbonate, sodium carbonate, and cleaning, scouring and washing compounds* (except commodities in bulk), and (2) *materials, equipment and supplies* used in the manufacture of the commodities named in (1), between the facilities of Church and Dwight Co., Inc., at points in Sweetwater County, WY, Old Fort, OH, and Syracuse, NY, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Denver, CO.)

MC119176 (Sub-29F), filed January 22, 1980. Applicant: THE SQUAW TRANSIT COMPANY, a corporation, 6211 So. 49th West Ave., Tulsa, OK 74107. Representative: Clint Oldham, 1108 Continental Life Bldg., Fort Worth, TX 76102. Transporting (1) *grain and forage silos and parts, equipment and supplies* (except in bulk), for the foregoing commodities, and (2) *materials and supplies* (except in bulk), used in the manufacture of the commodities named in (1) above, between the facilities of Southwestern Porcelain, Inc., at or near Sand Springs, OK, to points in the United States (except AK and HI). (Hearing site: Tulsa, OK, or Fort Worth, TX.)

MC 120737 (Sub-62F), filed January 21, 1980. Applicant: STAR DELIVERY & TRANSFER, INC., P.O. Box 39, Canton, IL 61520. Representative: James C. Hardman, 33 No. LaSalle St., Chicago, IL 60602. Transporting *pipe and pipe fittings and accessories*, from the facilities of the The Clow Corporation, in Talladega County, AL, to points in the United States in and east of MN, IA, MO, AR, and LA. (Hearing site: Chicago, IL, or Birmingham, AL.)

MC 124887 (Sub-109F), filed January 24, 1980. Applicant: SHELTON TRUCKING SERVICE, INC., Rt. 1, Box 230, Altha, FL 32421. Representative: Sol H. Proctor, 1101 Blackstone Bldg., Jacksonville, FL 32202. Transporting (1) *iron and steel articles*, and (2) *materials, equipment and supplies* used in the production of iron and steel articles, between points in the United States in and east of ND, SC, NE, KS, OK, and TX, restricted to the transportation of traffic originating at or destined to the facilities of Tennessee Forging Steel Corp. (Hearing site: Jacksonville or Tallahassee, FL.)

MC 125777 (Sub-268F), filed January 21, 1980. Applicant: JACK GRAY TRANSPORT, INC., 4600 East 15th Ave., Gary, IN 46406. Representative: Allan C. Zuckerman, 39 So. LaSalle St., Chicago, IL 60603. Transporting *iron and steel grinding balls*, in dump vehicles, from North Lake, MI, to points in the United States (except AK and HI). (Hearing site: Chicago, IL.)

MC 125777 (Sub-269F), filed January 31, 1980. Applicant: JACK GRAY TRANSPORT, INC., 4600 East 15th Ave., Gary, IN 46406. Representative: Allan C. Zuckerman, 39 So. LaSalle St., Chicago, IL 60603. Transporting *silicon carbide*, in dump vehicles, from Hennepin, IL, to points in AL, AR, FL, GA, IA, KY, LA, MA, MD, MI, MO, MN, MS, NJ, NY, NC, OH, OK, PA, SC, TN, TX, VA, WV, and WI. (Hearing site: Chicago, IL.)

MC 133966 (Sub-58F), filed January 21, 1980. Applicant: NORTH EAST EXPRESS, INC., P.O. Box 127, Mountaintop, PA 18707. Representative: Edward G. Villalon, 1032 Pennsylvania Bldg., Pennsylvania Ave. & 13th St., N.W., Washington, DC 20004. Transporting (1) *fibrous glass products and materials, mineral wool, mineral wool products and materials, insulated air ducts, flexible air ducts, insulating products and materials, glass fiber rovings, yarn and strands, glass fiber mats and mattings*, and (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities in (1) above, between points in the United States (except AK and HI), restricted against the transportation of commodities in bulk, and restricted to traffic originating at or destined to the facilities of CertainTeed Products Corporation. (Hearing site: Philadelphia, PA.)

MC 136786 (Sub-205F), filed January 31, 1980. Applicant: ROBCO TRANSPORTATION, INC., P.O. Box 10375, Des Moines, IA 50309. Representative: Larry D. Knox, 600 Hubbell Bldg., Des Moines, IA 50309. Transporting *frozen bagels*, from the

facilities of Lender's Bagel Bakery Inc., at or near Buffalo, NY, to points in the United States in and west of MI, OH, WV, VA, NC, SC, GA, and FL (except AK and HI). (Hearing site: Buffalo, NY.)

MC 138206 (Sub-18F), filed January 24, 1980. Applicant: TRULINE CORPORATION, 4455 So. Cameron Ave., Las Vegas, NV 89103. Representative: Robert G. Harrison, 4299 James Dr., Carson City, NV 89701. Transporting *iron and steel products,* from the facilities of Industrial Steel Corporation, in Clark County, NV, to points in AZ, CA, CO, and UT. (Hearing site: Las Vegas, NV.)

MC 139906 (Sub-89F), filed January 22, 1980. Applicant: INTERSTATE CONTRACT CARRIER CORPORATION, 2156 West 2200 So., P.O. Box 30303, Salt Lake City, UT 84125. Representative: Richard A. Peterson, 521 So. 14th St., P.O. Box 81849, Lincoln, NE 68501. Transporting *plumber's goods,* between the facilities of Norris Industries Price Pfister Division at or near Pacoima, CA, and points in CO, GA, ID, IL, MT, NJ, OK, OR, TX, WA, and WY. (Hearing site: Lincoln, NE, or Salt Lake City, UT.)

Note.—Dual operations may be involved.

MC 143607 (Sub-25F), filed January 23, 1980. Applicant: BAYWOOD TRANSPORT, INC., Rt 6, P.O. Box 2611, Waco, TX 76706. Representative: E. Stephen Heisley, 805 McLachlen Bank Bldg., 666 Eleventh St., NW., Washington, DC 20001. Contract carrier, transporting (1) *such commodities* as are dealt in by wholesale and retail food, drug and chain stores and business houses, and (2) *materials, equipment, and supplies* used in the manufacture, processing, production, distribution and sale of the commodities in (1) above, between points in the United States (except Ak and HI), under continuing contract(s) with Warner-Lambert Company of Morris Plains, NJ. (Hearing site: Newark, NJ.)

MC 143636 (Sub-8F), filed January 21, 1980. Applicant: RON SMITH TRUCKING, INC., R.R. No. 2, Box 4, Newman, IL 61942. Representative: Douglas G. Brown, The INB Center, Suite 555, One North Old State Capitol Plaza, Springfield, IL 62701. Transporting *anhydrous ammonia,* in bulk, in tank vehicles, from points in Vigo County, IN, to points in IL. (Hearing site: Chicago, IL.)

MC 143696 (Sub-17F), filed January 20, 1980. Applicant: AMERICAN INDUSTRIAL TRANSPORTATION, INC., P.O. Box 1416, Henderson, TX 75652. Representative: Hugh T. Matthews, 2340 Fidelity Union Tower, Dallas, TX 75201. Contract carrier, transporting *contactors equipment and materials* used in the manufacture and maintenance of contractors equipment, between points in TX, on the one hand, and, on the other, points in the United States (except AK and HI), under continuing contract(s) with Texas Mechanical Contractors of McKinney, TX. (Hearing site: Dallas, TX.)

MC 143956 (Sub-8F), filed January 24, 1980. Applicant: GARDNER TRUCKING CO, INC., P.O. Drawer 493, Walterboro, SC 29488. Representative: Steven W. Gardner, (same address as applicant). Transporting *compound refrigerant and cooler boxes,* from Columbia, MD, to points in NY, NJ, MA, PA, VT, DE, TN, FL, NC, GA, OH, MI, and WV. (Hearing site: Washington, DC.)

MC 144117 (Sub-56F), filed January 22, 1980. Applicant: T. L. C. LINES, INC, P.O. Box 1090, Fenton MO 63026. Representative: Jack H. Blanshan, 205 West Touhy, Ave., Suite 200, Park Ridge, IL 60068. Transporting *foodstuffs* (except frozen foods and commodities in bulk), in vehicles equipped with mechanical refrigeration, from (1) the facilities of Hershey Chocolate Company, Division of Hershey Foods Corp., at Derry Township (Dauphin County) and Hampden Township (Cumberland County), PA, and the facilities of Y & S Candies, Inc., at East Hampfield Township (Lancaster County), PA, to Denver, CO, Milwaukee, OR, Phoenix, AZ, and Salt Lake City, UT, and (2) the facilities of Hershey Chocolate Company, Division of Hershey Foods Corp. at Hampden Township (Cumberland County) PA to points in CA, restricted in (1) and (2) to the transportation of traffic originating at the named origins. (Hearing site: Washington, DC.)

MC 144166 (Sub-5F), filed January 25, 1980. Applicant: BILL STARR TRUCKING, INC., 1041 Vista Dr., Independence, MO 64056. Representative: Bill Starr (same address as applicant). Contract carrier, transporting *toilet preparations* and other articles in mixed shipments, from Kansas City, MO to Wichita, KS, Oklahoma City and Tulsa, OK, and Dallas, EL Paso, Ft. Worth and Houston, TX, under continuing contract(s) with Avon Products, Inc., of Kansas City, MO. (Hearing site: Kansas City, MO.)

Note.—Dual operations may be involved.

MC 144837 (Sub-3F), filed January 29, 1980. Applicant: TWICKINGHAM TRUCKING CO., a corporation, 1205 Northwest Marshall, Portland, OR 97209. Representative: Steven R. Schell, 12th Floor, 707 Southwest Washington, Portland, OR 97205. Contract carrier, transporting *drums, pails, food glaze, paint, gum shellac, shellac thinner, wood preservative, aerosol paint, and dry paint materials,* between Portland, OR, on the one hand, and, on the other, San Francisco and Los Angeles, CA, under continuing contract(s) with Zehrung Chemical Co., of Portland, OR. (Hearing site: Portland, OR.)

MC 144926 (Sub-9F), filed January 24, 1980. Applicant: E. W. WYLIE CORPORATION, P.O. Box 1188, Fargo, ND 58107. Representative: Thomas J. Van Osdel, 502 First National Bank Bldg., Fargo, ND 58126. Contract carrier, transporting *tanks and parts, attachments and accessories* for tanks, (1) from the facilities of O'Day Equipment, Inc., at Fargo, ND, and Sioux Falls, SD, to points in ND, SD, MN, IA, WY, MT, NE, ID, WA, and OR, and (2) from Minneapolis, MN, to the facilities of O'Day Equipment, Inc., at Fargo, ND, and Sioux Falls, SD, under continuing contract(s) with O'Day Equipment, Inc. (Hearing site: Fargo, ND, or Minneapolis, MN.)

MC 145437 (Sub-14F), filed January 14, 1980. Applicant: JWI TRUCKING, INC., 8100 North Teutonia Ave., Milwaukee, WI 53209. Representative: Michael J. Wyngaard, 150 East Gilman St., Madison, WI 53703. Contract carrier, transporting *wearing apparel and materials, equipment and supplies* used or useful in the manufacture, sale or distribution of wearing apparel from Carson City, NV, to points in CA, OR, and WA, under continuing contract(s) with Jockey International, Inc. (Hearing site: Madison, or Milwaukee, WI.)

MC 145437 (Sub-15F), filed January 14, 1980. Applicant: JWI TRUCKING, INC., 8100 North Teutonia Ave., Milwaukee, WI 53209. Representative: Michael J. Wyngaard, 150 East Gilman St., Madison, WI 53703. Contract carrier, transporting *Wearing apparel and materials, equipment and supplies* used or useful in the manufacture, sale or distribution of wearing apparel (except commodities in bulk), from Medina, OH and Union, SC to Farmingdale, NY, under continuing contract(s) with Jack Winter Appeal, Inc., and Mary Lester Fashion Fabrics, Inc. (Hearing site: Madison, or Milwaukee, WI.)

MC 146056 (Sub-4F), filed January 31, 1980. Applicant: PURITY TRANSPORTATION COMPANY, a Corporation, 1171 N. Water, Decatur, IL 62523. Representative: Robert T. Lawley, 300 Reisch Bldg., Springfield, IL 62701. Contract carrier, transporting (1) *bakery products,* from Bloomington, Champaign, Decatur, and Rockford, IL, to points in IA, MO, and WI, and (2) *flour,* from Winona, MN, to Rockford, IL, under

continuing contract(s) in (1) and (2) with Purity Baking Company, of Decatur, IL. (Hearing site: Chicago, IL.)

MC 146187 (Sub-18F), filed January 21, 1980. Applicant: THE TEN WHEELERS, INC., Rt. 2, Gregory Rd., Greenback, TN 37742. Representative: Edward C. Blank, II, P.O. Box 1004, 805 So. Garden St., Columbia, TN 38401. Transporting *floor coverings and articles* used in the installation and maintenance of floor coverings, from the facilities of Armstrong Cork Co., at Lancaster and East Hampfield Township, PA, to points in AL, FL, GA, KY, LA, MS, NC, SC, and TN, restricted to the transportation of traffic originating at the above named origins and destined to the indicated destinations. (Hearing site: Nashville, TN, or Lancaster, PA.)

MC 147787 (Sub-5F), filed January 21, 1980. Applicant: SOUTHERN DRAYAGE, INC., 4223 Space Center Dr., Jackson, MS 39205. Representative: John A. Crawford, 17th Floor Deposit Guaranty Plaza, P.O. Box 22567, Jackson, MS 39205. Contract carrier, transporting (A) *lawn mowers, rotary snow plows, lawn and garden tractors and parts, equipment and accessories* for the foregoing commodities, from points in Lincoln County, MS, to points in AL, FL, GA, IL, IN, KY, MA, MI, NJ, NY, NC, OH, PA, SC, TN, VA, and WI, and (B) *equipment, materials, and supplies* (except commodities in bulk) used in the manufacture of the commodities in (A), from points in IL, IN, KY, MI, OH, TN, and WI to points in Lincoln County, MS, under continuing contract(s) with Jacobsen, Division of Textron, Inc. (Hearing site: Jackson, MS.)

Note.—Dual operations may be involved.

MC 148227 (Sub-2F), filed January 28, 1980. Applicant: D–T INCORPORATED, 1002–B Koenigheim, San Angelo, TX 76903. Representative: Tom C. Massey, 202 W. Twohig, Suite 202, P.O. Box 2809 San Angelo, TX 76902. Contract carrier, transporting *motorcycles*, from Baton Rouge, LA, to Lubbock, San Angelo, Big Spring, Midland, Abilene, and Odessa, TX, under continuing contract(s) with Cycle City, Inc., of Lubbock, Cycles Unlimited, of San Angelo, Honda of Lubbock, A–1 Cycle Shop, of Big Spring, Glenn's Motors, Inc., of Midland, Kents Honda, of Abilene, and Permian Basin Honda, of Odessa. (Hearing site: Dallas, or Fort Worth, TX.)

MC 148376 (Sub-2F), filed January 7, 1980. Applicant: BILCO TRANSPORTATION, INC., 660 Riverside Rd., Watsonville, CA 95076. Representative: Eldon M. Johnson, 650 California St., Suite 2808, San Francisco, CA 94108. Contract carrier, transporting *foodstuffs*, in vehicles equipped with mechanical refrigeration, (1) from points in ID, OR, WA, and CO to the facilities of A. C. Arioto and Sons, in San Jose, CA, and (2) from the facilities of A. C. Arioto and Sons, in San Jose, CA to points in WA, under continuing contract(s) in (1) and (2) with A. C. Arioto & Sons, of San Jose, Ca. (Hearing site: San Francisco or San Jose, CA.)

MC 149117F, filed January 11, 1980. Applicant: ARLYNE CORPORATION, P.O. Box 232, Hazel Park, MI 48030. Representative: William B. Elmer, 21635 East Nine Mile R, St. Clair Shores, MI 48080. Contract carrier, transporting *iron and steel, iron and steel products, and materials and supplies* used in connection with the manufacture, processing and distribution of iron and steel and iron and steel products between points in Wayne County, MI, on the one hand, and, on the other, points in IL, IN, KY, OH and PA, under continuing contract(s) with Potomac Steel Corp. (Hearing site: Detroit, MI.)

MC 149167 (Sub-1F), filed January 31, 1980. Applicant: MAVERICK RENTING & LEASING, INC., 105 Howell St., Jersey City, NJ 07306. Representative: Piken & Piken, Queens Office Tower, 95–25 Queens Blvd. Rego Park, NY 11374. Contract carrier, transporting *bakery products* (except commodities in bulk), (1) between the facilities of Entenmann's Inc., at North Lake, IL, on the one hand, and, on the other, points in MO, MI, OH, WI, IN, IL, KY, and IA, and (2) between the facilities of Entenmann's at or near Miami, FL, on the one hand, and, on the other, points in AL and GA, under continuing contract(s) in (1) and (2) with Entenmann's Inc. (Hearing site: New York, NY.)

MC 149286F, filed January 9, 1980. Applicant: BORDERS TRANSPORTATION COMPANY, INC., General Delivery, Ulysses, KY 41264. Representative: Jewell Borders (same address as applicant). Contract carrier, transporting *mining machinery and equipment, and parts, attachments, and accessories* for the foregoing commodities, (1) between the facilities of Eimco Elkhorn, Division of Envirotech Corporation, at Martin, KY, Monroe, NC, and Salt Lake City, UT, and (2) from the facilities named in (1) above, to points in CO, IL, IN, KS, KY, MO, NM, NC, OH, PA, TN, UT, VA, WV, WY, and SC, under continuing contract(s) in (1) and (2) with Envirotech Corporation of Menlo Park, CA. (Hearing site: Louisville or Lexington, KY.)

MC 149326F, filed January 31, 1980. Applicant: JACK W. STRINGER & CHARLOTTE STRINGER, d.b.a. J & C STRINGER TRUCKING, a partnership, 211 W. Hight, R.R. #2, Macon, IL 62544. Representative: Robert T. Lawley, 300 Reisch Bldg., Springfield, IL 62701. Contact carrier, transporting *corn and soybean products* (except in bulk), from Decatur, IL, to points in CA, IN, MI, OH, and TX, under continuing contract(s) with A. E. Staley Manufacturing Company, of Decatur, IL. (Hearing site: Chicago, IL, or St. Louis, MO.)

MC 149327F, filed January 31, 1980. Applicant: D. J. SALYER, INC., 84 Manchester St., Concord, NH 03301. Representative: Fritz R. Kahn, Suite 1100, 1660 L St., NW., Washington, DC 20036. Transporting *building and construction materials, equipment and supplies, and commodities the transportation of which because of size or weight requires the use of special equipment, and parts for the foregoing commodities*, between points in NH, VT, and MA, on the one hand, and, on the other, points in NH, ME, VT, RI, CT, MA, NY, and NJ. (Hearing site: Boston, MA, or Washington, DC.)

MC 149366 (Sub-2F), filed January 23, 1980. Applicant: NORTH CENTRAL JOBBERS, INC., Northwood, ND 58264. Representative: William J. Gambucci, Suite M–20, 400 Marquette Ave., Minneapolis, MN 55402. Transporting *lime, salt, and calcium chloride*, from Duluth, MN, to points in MT, ND, and SD. (Hearing site: Duluth or Minneapolis, MN.)

Agatha L. Mergenovich,

Secretary.

FR Doc. 80–10083 Filed 4–2–80; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

National Institute of Justice

Preindictment Decisionmaking; Solicitation

The National Institute of Justice announces a competitive research solicitation aimed at examining Pre-Indictment Decision Making.

The solicitation asks for preliminary proposals to be submitted for peer review in accordance with the criteria set forth in the solicitation. In order to be considered, all proposals must be postmarked no later than May 23, 1980. A grant or cooperative agreement for an 18 month research project is planned, with funding not to exceed $150,000. To maximize competition for this award, both profit-making and non-profit organizations are eligible to apply.

Copies of the solicitation may be obtained by sending a mailing label to: Solicitation Request No. 131, Pre-

Indictment Decision Making, National Criminal Justice Reference Service, Box 6000, Rockville, Maryland 20850.

Dated: March 25, 1980.

Harry M. Bratt,

Primary and Principal Assistant to the Acting Director, National Institute of Justice.

[FR Doc. 80-10104 Filed 4-2-80; 8:45 am]

BILLING CODE 4410-18-M

Role of the Grand Jury; Solicitation

The National Institute of Justice announces a competitive research solicitation aimed at examining the Role of the Grand Jury.

The solicitation asks for proposals to be submitted for peer review in accordance with the criteria set forth in the solicitation. In order to be considered, all proposals must be postmarked no later than May 17, 1980. A grant or cooperative agreement for an 18 month research project is planned, with funding support not to exceed $200,000. To maximize competition for this award both profit-making and non-profit organizations are eligible.

Copies of the solicitation may be obtained by sending a mailing label to: Solicitation Request, The Role of the Grand Jury, National Criminal Justice Reference Service, Box 6000, Rockville, Maryland 20850.

For questions pertaining to this request for solicitations, contact Jonathan Katz, Adjudication Division, Office of Research Programs, NIJ, 633 Indiana Avenue, N.W., Washington, D.C. 20531, (301) 492-9114.

Dated: March 25, 1980.

Approved:

Harry M. Bratt,

Primary and Principal Assistant to the Acting Director, National Institute of Justice.

[FR Doc. 80-10103 Filed 4-2-80; 8:45 am]

BILLING CODE 4410-18-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (80-22)]

Space and Terrestrial Applications Steering Committee; Annual Comprehensive Review

Section 7(b) of Pub. L. 92-463, the Federal Advisory Committee Act, dated October 6, 1972, requires a comprehensive review of Federal advisory committees.

In accordance with implementing instructions of Office of Management and Budget Circular No. A-63, Transmittal Memorandum No. 5, as modified February 14, 1980, NASA is reviewing for continuation the Space and Terrestrial Applications Steering Committee, Proposal Evaluation Advisory Subcommittee.

The intent of this advisory subcommittee is to obtain the advice of the scientific community in evaluating research and investigations proposals for inclusion in NASA's Space and Terrestrial Applications programs. The Space and Terrestrial Applications Steering Committee, under which the subcommittee operates, is a NASA-sponsored interagency committee, composed wholly of Government employees.

The public is hereby invited to submit comments on the proposed continuation of this advisory subcommittee. Comments should be addressed to, or delivered to: National Aeronautics and Space Administration, Attn: Code LB-4, 400 Maryland Avenue SW., Washington, DC 20546. Comments should be received no later than April 10, 1980. Additional information may be obtained by calling Mary R. Lippolis, 202/755-8383.

Russell Ritchie,

Deputy Associate Administrator for External Relations.

March 31, 1980.

[FR Doc. 80-10149 Filed 4-2-80; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

[N-AR 80-14]

Reports, Safety Recommendations and Responses; Availability

The National Transportation Safety Board last week made available to the public copies of the following reports:

Highway

Safety Effectiveness Evaluation of the National Highway Safety Administration's Rulemaking Process, Volume III: Current Rulemaking (NTSB-SEE-80-2).—Under authority of the Independent Safety Board Act of 1974, the Board may "evaluate, assess the effectiveness, and publish the findings of the Board with respect to the transportation safety consciousness and efficacy in preventing accidents of other Government agencies * * *." The subject case history is the third and final factual report upon which the Safety Board will base an evaluation of the effectiveness of NHTSA's rulemaking process under the Federal Motor Vehicle Safety Standards (FMVSS).

Two earlier case histories, issued by the Safety Board last fall, covered NHTSA's truck air brake system rulemaking (FMVSS-121) and its motor vehicle passive restraint rulemaking (FMVSS-208). Volume III describes NHTSA's rulemaking procedures and summarizes eight selected standards which illustrate them:

- FMVSS 108—Lamps, Reflective Devices and Associated Equipment.
- FMVSS 130—Heavy Duty Vehicle Brake Systems.
- Low Tire Pressure Warning Indicators.
- FMVSS 203/204—Impact Protection for the Driver from the Steering Control System and Steering Control Rearward Displacement.
- FMVSS 214—Side Door Strength (Side Impact Protection).
- Pedestrian Initial Impact Protection.
- FMVSS 302—Flammability of Interior Materials (School Buses).
- FMVSS 400—Systems Safety Standards (Occupant Crash Protection).

Neither Volume III nor the two earlier case histories contain an analysis but will help serve as a basis for the Safety Board's evaluation of the NHTSA rulemaking process, to be published as Volume IV. Volume III was developed by the Safety Board through extensive interviews with NHTSA personnel, through examination of internal agency documents, including formal and informal documentation of specific rules, and through review of public dockets related to the standards. NHTSA has had the opportunity to review and comment on a draft of this report.

Special Study—Fatal Highway Accidents on Wet Pavement—The Magnitude, Location, and Characteristics (NTSB-HSS-80-1).—The problem of highway accidents on wet pavement, although not well defined, has been considered by many States to be of moderate to major concern. This special study was undertaken by the Safety Board to determine the magnitude of the wet-pavement accident problem nationwide, to determine the significance of the locations of the wet-pavement accidents, and to determine the characteristics of these accidents. Data developed by the Safety Board indicate that during 1976 and 1977, 13.5 percent of all fatal accidents occurred on wet pavement, while precipitation occurred only about 3.0 to 3.5 percent of the time nationwide. This indicates that fatal accidents on wet pavement occur 3.9 to 4.5 times more often than might be expected, and that the wet-pavement accident problem should be of concern to all States.

To measure the performance of the activities of States aimed at reducing wet-pavement accidents, the Safety Board developed a Wet Fatal Accident Index for each State. This method

indicated an area in the United States with good performance and a belt with poorer-than-average performance. Additionally, NHTSA's fatal Accident Reporting System data showed the types of accidents and the characteristics of the roads where fatal accidents occurred during period when the pavement was wet.

As a result of this special study, the Safety Board on March 12 issued three recommendations (Nos. H–80–21 through-23) to the Federal Highway Administration and one recommendation (No. H–80–24) to NHTSA. (See 45 FR 18209, March, 20, 1980.)

Marine

Accident Report—Collision of Greek Bulk Carrier M/V IRENE S. LEMOS and Panamanian Bulk Carrier M/V MARITIME JUSTICE, Lower Mississippi River, near New Orleans, Louisiana, November 9, 1978 (NTSB–MAR–80–4).—At 0640, on November 9, the carriers collided at mile 78.3 AHP, about 15 statute miled below New Orleans. Because of dense fog, the visibility at the time of the collision was less then 400 feet. The vessels struck nearly head-on, damaging the bows of both vessels. There were no deaths or injuries. Cost of repairs to the two vessels was estimated at $4 million. About 1,800 barrels of fuel oil were discharged into the Mississippi River and resulted in local health officials securing the municipal water intake ½ mile downriver.

The Safety Board determined that the probable cause of the accident was the poor judgment of the pilots of the MARITIME JUSTICE and the IRENE S. LEMOS when they agreed to meet and pass in near zero visibility conditions at English Turn Bend, where the risk of collision was much greater than in a straight portion of the river and the failure of the vessels to move to the extreme right of the channel. Contributing to the accident was the failure of the mate on the MARITIME JUSTICE and the master of the IRENE S. LEMOS to exercise their responsibility to assure that the vessels were navigated safely, rather than indiscriminately relying on the pilots of the vessels.

This accident was investigated jointly by the Safety Board and the U.S. Coast Guard. The investigation included a public hearing which convened in New Orleans on November 14, 1978, and reconvened on November 28, 1978. This report is based on the factual information developed by this investigation. As a result of the investigation, the Safety Board on March 20, 1980, forwarded by separate letters the following recommendations:

M–80–9 through M–80–13 to the U.S. Coast Guard

Determine which bends on the lower Mississippi River present difficult navigational problems and should be limited to one-way traffic during conditions of reduced visibility, and promulgate appropriate restrictions (M–80–9)

Require the New Orleans Vessel Traffic Center to inform participating vessels routinely of important weather information, such as dense fog, and withdraw the current instructions which require vessels to request such information specifically. (M–80–10)

Accelerate rulemaking, Docket No. 75–112, to make participation in the New Orleans Vessel Traffic Service mandatory. (M–80–11)

Develop and implement a plan of action for the Captain of the Port of New Orleans and the New Orleans Vessel Traffic Center that will insure prompt action to control traffic movements on the lower Mississippi River during conditions of limited visibility. (M–80–12)

Re-evaluate the proposed level of vessel traffic service (VTS) on the lower Mississippi River, and determine if an extended surveillance system is needed to overcome the severe limitations of the present VTS to provide useful, accurate information to participants. (M–80–13)

Require that every master of an oceangoing vessel inform himself of the pilot's plan to maneuver his ship in or out of a harbor and that the master determine, with the pilot's assistance, the critical aspects of the maneuver, including the pilot's plan for emergencies. The master should then be required to instruct his crew to insure that high-risk tasks receive priority. (M–74–15, reiterated)

Amend 33 CFR 164.11(k) to require that masters and pilots discuss beforehand and agree to the essential features and relevant checkpoints of maneuvers expected to be undertaken. (M–77–33, reiterated)

M–80–14 through–17 to the Crescent River Port Pilots Association

Promulgate a policy that member pilots refrain from meeting or overtaking other vessels at bends on the lower Mississippi River which present difficult navigational problems during conditions of reduced visibility. (M–80–14)

Promulgate a policy that member pilots confer with ship's masters on any high risk maneuvering agreements made over the bridge-to-bridge radiotelephone, well in advance of the execution. (M–80–15)

Promulgate a policy that member pilots participate in the New Orleans Vessel Traffic Service to improve its level of effectiveness and reliability. (M–80–16)

Instruct member pilots regarding the importance of complying with Article 15 of the Inland Rules of the Road which states, in part: "In fog, mist, falling snow, or heavy rainstorms, whether by day or night, the signals described in this article shall be used as follows, namely: (a) A steam vessel under way shall sound, at intervals of not more than one minute, a prolonged blast." (M–80–17)

Include in the prescribed procedures for pilots under their jurisdiction a requirement that pilots specifically ascertain vessel maneuvering characteristics before getting underway, and that they discuss with the master before getting underway the essential features and relevant checkpoints for maneuvers to be undertaken. (M–79–107, reiterated)

Each of the above new recommendations, M–80–9 through M–80–17, is designated "Class II, Priority Action." The three reiterated recommendations were, as of March 20, classified as "open" by the Safety Board.

Pipeline

Accident Report—Southern Natural Gas Pipeline Company Rupture and Fire of a 14-inch Gas Transmission Pipeline, Southeast of New Orleans, Louisiana (Offshore), July 15, 1979 (NTSB–PAR–80–1).—Investigation showed that the pipeline was ruptured by a grappling hook from the PETE TIDE II, an anchor-handling boat working in the Gulf of Mexico. A seven-man, anchor-handling crew either was swept or jumped overboard, and the escaping natural gas was ignited by an unknown source aboard the boat. Two men are missing and presumed dead; four men were injured. The boat was damaged by fire, and 2,638 Mcf of natural gas was lost.

The Safety Board has determined that the probable cause of the accident was the rupture of a 14-inch natural gas transmission pipeline by a grappling hook from the PETE TIDE II, an anchor-handling boat. The natural gas from the ruptured pipeline rose to the surface of the water and was ignited by a source on board the PETE TIDE II. Contributing to the accident were the insufficient information given by Shell Oil Company to the contractor concerning the existence and location of the pipeline and the failure of Shell to mark the pipeline.

As a result of its investigation of this accident, the Safety Board on March 13 issued by four separate letters eight safety recommendations: P–80–15 to the American Gas Association, the American Petroleum Institute, the Offshore Operators Committee and the International Association of Drilling Contractors, jointly; P–80–16 and –17 to the United States Coast Guard; P–80–18 to the U.S. Department of the Interior; and P–80–19 through 22 to the Shell Oil Company. (See 45 FR 20255, March 27, 1980.)

Railroad

Accident Report—Rear-End Collision of Consolidated Rail Corporation Freight Trains ALPG–2 and APJ–2, near

Royersford, Pennsylvania, October 1, 1979 (NTSB–RAR–80–2).—Consolidated Rail Corporation (ConRail) eastbound freight train ALPG–2 struck the rear of standing ConRail eastbound freight train APJ–2 on the No. 2 main track near Royersford. The engineer and conductor of ALPG–2 were killed. The locomotive unit of ALPG–2 was derailed and destroyed. The caboose of APJ–2 and a total of 20 cars were derailed. Damage was estimated to be $562,000.

The probable cause of this accident, as determined by the Safety Board, was the failure of the conductor of train ALPG–2, who was operating the train without authority and under the influence of marijuana, to comply with a "stop and proceed" signal aspect located 3,600 feet from the collision site and to respond to flagging protection provided by the rear brakeman of train APJ–2 and stop the train. Contributing to the accident was the conductor's failure to perform his assigned duties by (1) ensuring that the head brakeman performed his duties in his assigned location in the locomotive; and (2) ensuring that the engineer was physically fit and capable of operating the train in conformity with all applicable rules and regulations. Also contributing was the absence of an adequate backup system to control the train in the event that the crew failed to do so.

A "Class II, Priority Action" recommendation, No. R–80–5, was issued by the Safety Board on March 5 to ConRail. (See 45 FR 16367, March 13, 1980.) In addition, the Safety Board reiterates the following recommendation which was made to the Federal Railroad Administration on December 30, 1975, as a result of its investigation of a train collision at Meeker, La.:

> Promulgate regulations which require an adequate backup system for mainline freight trains that will insure that a train is controlled as required by the signal system in the event that the engineer fails to do so. (R–76–3)

Special Investigation Report—The Accident Performance of Tank Car Safeguards (NTSB–HZM–80–1).—The derailment of the Southern Pacific Transportation Company freight train near Paxton, Texas, on September 8, 1979, provided the Safety Board with the opportunity to examine the effectiveness of tank car safeguards during a derailment. Reconstruction of the accident damage sequence showed that safeguards did, in fact, reduce the potential for a spill and catastrophic overheating of thermally coated cars. It was also observed that damage to the top fittings and lower outlet valves, which occurred when cars collided with each other and with other objects after they left the track, was the most frequent cause of product loss.

As a result of this investigation, the Safety Board on March 12 made recommendations to the Department of Transportation concerning the extension of safeguard requirements to all types of tank cars, modification of cars to prevent collision damage to top fittings and lower outlet valves, investigation of the effect of car placement in collisions, and crashworthiness testing of new tank car designs. (See recommendations R–80–10 through 16; 45 FR 18212, March 20, 1980.)

Special Study—Railroad Emergency Procedures (NTSB–RSS–80–1).—The Safety Board has investigated at least 19 accidents during the past 10 years in which serious shortcomings were noted in the procedures used by railroad operating personnel during the emergency. In view of an increasing number of train accidents, the Safety Board undertook this special study to document the reasons for these procedural shortcomings. The study examines accident experience and the rules and procedures which the railroads use for guidance of their train crewmembers, and evaluates the effectiveness of existing procedures.

A major conclusion of this study was that the rules which almost all railroads use for guidance of their train crewmembers during emergencies do not establish lines of authority, task identification, task scheduling, or task assignment. Calling for corrective action, the Safety Board on March 5 issued recommendations R–80–6 and –7 to the Federal Aviation Administration and reiterated recommendation R–76–29. (See 45 FR 16367, March 13, 1980.)

Aviation Safety Recommendation Letters

A–80–22 and –23.—Last May 30 a deHavilland DHC–6–200 (N68DE), owned and operated by Downeast Airlines, crashed while making a "localizer only" approach to runway 3 at the Knox County Regional Airport, Rockland, Maine. Both flight crewmembers and 15 of the 16 passengers were killed; the surviving passenger was injured seriously.

The Safety Board's investigation of the accident revealed that although instrument approaches to the Knox County Regional Airport are from the south, there are no reference visibility markers to measure low visibility conditions south of the airport. In addition, the Board notes that there are no published guidelines which specify the number and location of visibility markers needed at airports to assure representative surface visibility values. Accordingly, on March 26 the Safety Board recommended that the Federal Aviation Administration:

> Insure that lighted visibility markers are installed south of the Knox County Regional Airport, Rockland, Maine, within sight in clear visibility conditions of the normal weather observation position. One of the markers should be placed about ¾ statute mile from the point of observation. (A–80–22)
>
> Establish guidelines on the location and number of visibility markers necessary at airports to assure representative surface visibility values for airport runways and the airport runway environment. (A–80–23)

A–80–24 and –25.—On April 21, 1979, a Piper Model PA–18 Super Cub crashed at the Lebanon (N.H.) Regional Airport. The sky was clear and although the wind was calm, the airplane was observed to bounce severely several times during the attempted landing. The airplane then turned right, and a go-around was initiated. Shortly thereafter, the aircraft crashed near the airport boundary and burned. The pilot was killed, and his passenger was seriously injured.

The Board notes that the pilot was in the process of delivering this new airplane from the Piper factory at Lock Haven, Pa., to Lebanon when the accident occurred. Although he had accumulated several hundred flight hours in tricyle gear aircraft, his experience in tailwheel airplane was limited to about 5 hours. Moreover, before the date of the accident, he had not flown in a tailwheel airplane for 2 years. While the pilot made a number of takeoffs and landings with a flight instructor in the PA–18 immediately before he departed for Lebanon, the Safety Board believes that the scope of this familiarization was inadequate and did not prepare him sufficiently to take charge of the aircraft.

Further, the Safety Board notes that the safe operation of tailwheel airplanes requires a unique measure of operational familiarization that is not transferable from experience in tricycle gear aircraft. Tailwheel airplanes are especially prone to loss of directional control during takeoff and landing, and to severe bouncing if the landing is not performed properly. The pilot's knowledge and level of proficiency concerning crosswind takeoffs and landings, power (wheel) landings, recovery from bounced landings, and go-around procedures are particularly critical to safe operation of tailwheel aircraft. The Safety Board's special study, "Single-Engine, Fixed-Wing General Aviation Accidents, 1972–1976," has shown that the total accident rate

for tailwheel aircraft is more than twice that of aircraft with tricycle landing gear.

The Safety Board believes that an adequate checkout of pilots in tailwheel airplanes is essential and that continued safe operation of these airplanes requires a minimum level of recent experience somewhat greater than presently required. The checkout should focus on safe takeoffs and landings and should provide measurable assurance of the pilot's capability to operate the airplane in all phases of flight. Consequently, the Safety Board recommends that the FAA:

Amend FAR 61.31, "General Limitations," to require that before acting as pilot-in-command of a tailwheel airplane, a private or commercial pilot receive flight instruction (including all normal and contingent aspects of takeoffs and landings) from an authorized flight instructor who has found him competent to pilot such airplanes and has so endorsed his pilot logbook. This requirement need not apply to pilots who have logged flight time as a pilot-in-command in tailwheel airplanes before the effective date of this amendment. (A–80–24)

Amend FAR 61.57, "Recent Flight Experience: Pilot in Command (c) General Experience," to make more stringent the current requirements for the pilot-in-command of a tail wheel configured airplane carrying passengers. (A–80–25)

Each of the above aviation safety recommendations is designated "Class II, Priority Action."

Responses to Safety Recommendations

Aviation

A–79–93.—The Federal Aviation Administration on March 18 responded to a recommendation issued last December 19 following invesigation of the Columbia Pacific Airlines' Beech 99 crash during takeoff from Richland (Wash.) Airport, February 10, 1978. The recommendation asked FAA to require that the Beech 99 and Beech 100 flight manuals include a checklist procedure that requires the crew to verify the operational status of the stabilizer out-of-trim warning system. (See 44 FR 76604, December 27, 1979.)

FAA states that a check of the trim warning system before the first flight of the day is a good operating practice. The manufacturer concurs and has agreed to add that item to the checklist which forms a part of the flight manuals for the Beech 99 and Beech 100 airplanes.

A–79–108.—FAA's letter of March 19 is in response to a recommendation issued last December 28 during the investigation of the Pan American Boeing 747 accident at Heathrow Airport, London, on December 27, 1979. The recommendation urged FAA to issue a telegraphic Airworthiness Directive to require a one-time inspection of the engine pylon structure in the area of pylon station 128 for loose or missing fasteners and fatigue damage for B–747 aircraft equipped with P&W JT9D engines. (See 45 FR 2117, January 10, 1980.)

FAA reports that last December 28, it issued telegraphic Airworthiness Directive T79–NW–21, effective upon receipt, which required inspection of the fasteners attaching the nacelle strut forward engine mount bulkhead to the horizontal firewall of the strut for loose or missing fasteners and inspection of the bulkhead chords and webs for cracks. The Airworthiness Directive was published at 45 FR 8285, February 7, 1980.

Intermodal

I–78–14 through –16.—Letter of February 22 from the Association of American Railroads (AAR) is in response to the Safety Board's February 6 comments on ARR's December 21, 1979, response to these recommendations, developed as a result of the Board's observation during investigation of a number of railroad derailment accidents that wreckage-clearing operations involving hazardous materials are in need of improvement. (See 43 FR 39870, September 7, 1978.)

With reference to recommendation I–78–14, the Board noted on February 6 that ARR's Bureau of Explosives is making an effort to understand and deal with such related problems as the integrity of damaged tank cars and the use of explosives charges in evacuating tanks. The Board asked to be furnished a detailed update of ARR's findings and proposed actions when such become available, stressing the fact that this particular recommendation is concerned with the wreckage-clearing phase of hazardous materials railroad accidents. Also, the Board encouraged AAR to include safety procedures for hazard assessment and wreckage-clearing coordination in the AAR publication, "Emergency Handling of Hazardous Materials in Surface Transportation," ans asked to receive a copy of any such material as will be included in the publication.

In commenting on I–78–15, which recommended that AAR disseminate these safety procedures, as soon as they are documented, to railroad personnel, wreckage-clearing contractor personnel, special emergency response team personnel, and public officials in the communities through which railroads operate, the Board noted that AAR has many pamphlets for distribution discussing the handling of certain types of accidents. The Board asked to be furnished copies of those pamphlets, if available, that are specifically related to this issue.

The Board noted that the issue of regular reviews of selected railroad wreckage-clearing operations, as recommended in I–78–16, is not addressed in AAR's December 21 letter.

The Board expressed appreciation for AAR's efforts in the area of safety for hazardous materials being transported by railroad, and encouraged AAR to work closely with the Federal Railroad Administration to fulfill recommendation I–79–13 which was issued last October 2 and directs ERA to address the area of health and safety during hazardous materials railroad wreckage-clearing operations.

AAR's February 22 response reports that several discussions have been held, subsequent to last December 21, with representatives of FRA concerning a cooperative AAR–FRA program which would address recommendation I–78–14. AAR is encouraged by the willingness of FRA to participate in such a project, and both parties are in the process of identifying all of the individual topics which must be considered. This task will soon be completed, after which AAR will develop the necessary procedures and will advise the Board of progress made and forward copies of material as it becomes suitable for publication.

It is AAR's intention also to review, update and revise as necessary information currently in print, and copies of the revised publications will be furnished to the Board as they are completed.

AAR notes that I–78–16 suggests a continuing review with upgrading as necessary of safety procedures. AAR believes that this procedure can be considered to be effectively implemented. At its regular bi-monthly meetings the Bureau of Explosives Steering Committee conducts a "post-mortem" on major derailments which have occurred since the prior meeting. No official minutes are kept, and frank and open discussions are encouraged. Lessons learned are carried back to the individual roads for consideration and implementation; matters of a general nature will appear in Bureau publications.

Pipeline

P–79–28.—On March 5 the Lone Star Gas Company responded to a recommendation issued last October 4 as a result of the Safety Board's investigation of a pipeline accident which occurred at North Richland Hills, Texas, on January 19, 1979. The

recommendation asked Lone Star to determine through sample inspections the extent of the problem of circumferential cracking on its service line/gas main connections similar to that at the accident locations, and to take appropriate action to reduce the probability of the recurrence of similar accidents. (See 44 FR 60183, October 18, 1979).

Lone Star reports that immediate action was taken and 328 random sample inspections were made of swing-joints and main connections in the cities of Arlington and North Richland Hills. These inspections indicate that there is no "immediate danger" with such connections as implied in the recommendation. There were no indications of problems with circumferential stress cracking at the connections or threads on the swing-joint and main connections, and no swing-joint or main connection was found to be in an excessive strain which would cause circumferential cracking at any of the threaded connections.

To augment these on-site inspections, Lone Star reviewed its leak repair work orders involving service line replacements, swing-joints, and service tap connections for instances of material failure caused by soil movement and stress cracking at the threaded connections. No instances of circumferential cracking at service line/gas main connections were revealed.

Railroad

R–80–2 and –3.—The Atchison, Topeka and Santa Fe Railway Company (AT&SF) on February 20 responded to recommendations issued as a result of investigation of the Amtrak passenger train derailment which occurred near Lawrence, Kans., October 2, 1979. The recommendations were forwarded January 25 and urged AT&SF to (1) establish requirements for testing automatic train stop (ATS) equipment over inert inductors at intial terminals before in-service departure of locomotives to determine that both the ATS alarm will sound and the brakes will automatically apply; and (2) establish rules and procedures which require crewmembers operating Amtrak locomotives to post-acknowledge all automatic train stop inductor locations unless the ATS equipment has a pre-acknowledgment device which indicates that the system is functioning. (See 45 FR 8391, February 7, 1980.)

AT&SF believes that recommendation R–80–2 should formally be addressed to Amtrak instead of the Santa Fe since Amtrak personnel are in charge of locomotives prior to in-service departure at initial terminals. In Santa Fe's case, the initial terminals where Amtrak locomotives require testing of ATS over inert inductors before in-service departure are Los Angeles and Chicago. AT&SF notes that under Santa Fe rules, the engineman is required to assure himself that the ATS device has been tested prior to departure. If the ATS cut-out cock is not sealed or the cab card does not indicate that a proper test has been accomplished, such information is to be properly reported. In addition, a Santa Fe Mechanical Department employee also checks the cab card to see if the ATS has been tested and to make certain that the ATS cut-out cock is sealed before an Amtrak locomotive departs on a passenger train over Santa Fe territory equipped for ATS. Nonetheless, AT&SF states, the requirements for testing of ATS on Amtrak locomotives over inert inductors before in-service departure from initial terminals is Amtrak's responsibility.

AT&SF reports implementing recommendation R–80–3 whereby the present procedure for acknowledgment and release of ATS applications has been amended to require crewmembers operating *all* Amtrak locomotives to post-acknowledge all ATS inductor locations. While Amtrak does have some locomotives presently operating on Santa Fe between Los Angeles and San Diego that have ATS equipment with a pre-acknowledgment device which indicates the system is functioning, AT&SF requires post-acknowledgment on *all* Amtrak locomotives. Until such time that Amtrak deems it necessary to equip *all* of its locomotives operating on Santa Fe with ATS equipment have pre-acknowledgment devices, uniform post-acknowledgment will be required to avoid possible confusion as a result of its engineers working with Amtrak locomotives equipped with different types of ATS devices.

Further, AT&SF notes that prior to Amtrak, Santa Fe locomotives used in passenger service were equipped with positive pre-acknowledgment devices which also provided an indication on the speed tape when an engineer pre-acknowledged an inductor. AT&SF has previously indicated to Amtrak that the positive pre-acknowledgment type of device is favored for the following reasons:

(a) It indicates that the ATS is functioning and is accompanied by a bell that can be heard by those in the cab of the locomotive.

(b) Positive pre-acknowledgment is an indication that the engineer is alert to a restriction(s) ahead.

(c) It gives the engineer an opportunity to react ahead of post-acknowledgment so that he has more than four to six seconds before a penalty brake application is experienced.

AT&SF strongly recommends that Amtrak be required to have uniform ATS devices on its locomotives operating on the Santa Fe, preferably of the positive pre-acknowledgment type.

Note.—Single copies of the Safety Board's reports are available without charge, as long as limited supplies last. Copies of recommendation letters, responses and related correspondence are also provided free of charge. All requests for copies must be in writing, identified by report or recommendation number. Address requests to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594.

Multiple copies of reports may be purchased from the National Technical Information Service, U.S. Department of Commerce, Springfield, Va. 22161.

(49 U.S.C. 1903(a)(2), 1906)

Margaret L. Fisher,

Federal Register Liaison Officer.

March 31, 1980.

[FR Doc. 80–10132 Filed 4–2–80; 8:45 am]

BILLING CODE 4910–58–M

Areas of Responsibility for NTSB Field Offices

Notice is hereby given that, effective May 1, 1980, the National Transportation Safety Board's 10 Field Offices will be responsible for investigating aviation, highway, pipeline, and railroad transportation accidents which occur in the United States, as indicated below and shown on the accompanying modal maps:

Atlanta

Location: 1720 Peachtree Street, N.W., Atlanta, Georgia 30309.
Telephone: 404–881–7385 (commercial); 257–7385 (Federal telecommunications).
Jurisdiction: *Aviation*—Georgia, Alabama, Mississippi, Tennessee, North Carolina, South Carolina, Kentucky, Virginia, West Virginia, Maryland, and the District of Columbia. *Highway*—Georgia, Tennessee, North Carolina, South Carolina, Mississippi, Alabama, and Florida. *Railroad*—Georgia, Mississippi, Alabama, South Carolina, and Florida.

Chicago

Location: 2300 E. Devon Avenue, Suite 140, Des Plaines, Illinois 60018.
Telephone: 312–827–8858 (commercial); 384–9248 (Federal telecommunications).
Jurisdiction: *Aviation*—Illinois, Indiana, Ohio, Minnesota, Wisconsin, and Michigan. *Railroad*—Illinois, Indiana,

Ohio, Minnesota, Wisconsin, and Michigan.

Denver

Location: 10255 East 25th Avenue, Suite 14, Aurora, Colorado 80010.
Telephone: 303–837–4492 (commercial); 327–4491 (Federal telecommunications).
Jurisdiction: *Aviation*—Colorado, Utah, Wyoming, Montana, North Dakota, and South Dakota. *Railroad*—Colorado, Utah, Wyoming, Montana, North Dakota, and South Dakota.

District of Columbia Field Office

Location: 800 Independence Avenue, S.W., Washington, D.C. 20594.
Telephone: 202–472–6091 (railroad commercial); 202–472–5973 (pipeline); 472–6091 (railroad Federal telecommunications); 472–5973 (pipeline Federal telecommunications).
Jurisdiction: *Pipeline*—Washington, Oregon, Idaho, Montana, Wyoming, North Dakota, South Dakota, Nebraska, Minnesota, Iowa, Wisconsin, Illinois, Michigan, Indiana, Ohio, Kentucky, Tennessee, Florida, Georgia, South Carolina, North Carolina, Virginia, West Virginia, Maryland, Delaware, Pennsylvania, New Jersey, New York, Vermont, Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, and the District of Columbia. *Railroad*—Virginia, Maryland, West Virginia, Kentucky, Tennessee, and North Carolina.

Fort Worth

Location: Federal Building, Room 7A07, 819 Taylor Street, Fort Worth, Texas 76102.
Telephone: 817–334–2616 (commercial); 334–2616 (Federal telecommunication).
Jurisdiction: *Aviation*—Texas, New Mexico, Oklahoma, Arkansas, and Louisiana. *Pipeline*—California, Nevada, Utah, Arizona, Colorado, New Mexico, Kansas, Oklahoma, Texas, Missouri, Arkansas, Louisiana, Mississippi, and Alabama.

Fort Worth

Jurisdiction: *Railroad*—Texas, New Mexico, Oklahoma, Arkansas, and Louisiana.

Kansas City

Location: Federal Building, Room 1748, 601 East 12th Street, Kansas City, Missouri 64106.
Telephone: 816–374–3576 (commercial) 758–3576 (Federal telecommunications).
Jurisdiction: *Aviation*—Missouri, Kansas, Nebraska, and Iowa. *Highway*—Missouri, Texas, Oklahoma, Arkansas, Kansas, Nebraska, North Dakota, South Dakota, Minnesota, Iowa, Wisconsin, Illinois, Indiana, and Kentucky. *Railroad*—Missouri, Kansas, Nebraska, and Iowa.

Los Angeles

Location: 15000 Aviation Boulevard, P.O. Box 6117, Lawndale, California 90261.
Telephone: 213–536–6041 (commercial); 213–536–6045 (commercial Law Judges); 966–6041 (Federal telecommunications aviation); 966–6036 (Federal telecommunications Railroad & Highway); 966–6045 (Federal telecommunications Law Judges).
Jurisdiction: *Aviation*—California, Nevada, Arizona, and Hawaii. *Highway*—California, Nevada, Arizona, New Mexico, Colorado, Utah, Wyoming, Montana, Idaho, Oregon, and Washington. *Railroad*—California, Nevada, and Arizona.

Miami

Location: 4471 N.W. 36th Street, Miami Springs, Florida 33166.
Telephone: 305–526–2940 (commercial); 350–2940 (Federal telecommunications).
Jurisdiction: *Aviation*–Florida, and the Commonwealth of Puerto Rico.

New York

Location: Federal Building, Room 102, JFK International Airport, Jamaica, New York 11430
Telephone: 212–995–3716 (commercial); 665–3716 (Federal telecommunications).
Jurisdiction: *Aviation*—New York, Pennsylvania, Delaware, New Jersey, Rhode Island, Connecticut, Massachusetts, New Hampshire, Vermont, and Maine. *Highway*—New York, Pennsylvania, Delaware, New Jersey, Rhode Island, Connecticut, Massachusetts, New Hampshire, Vermont, Maine, Michigan, Ohio, West Virginia, Virginia, Maryland, and District of Columbia. *Railroad*—New York, Pennsylvania, Delaware, New Jersey, Rhode Island, Connecticut, Massachusetts, New Hampshire, Vermont, and Maine.

Seattle

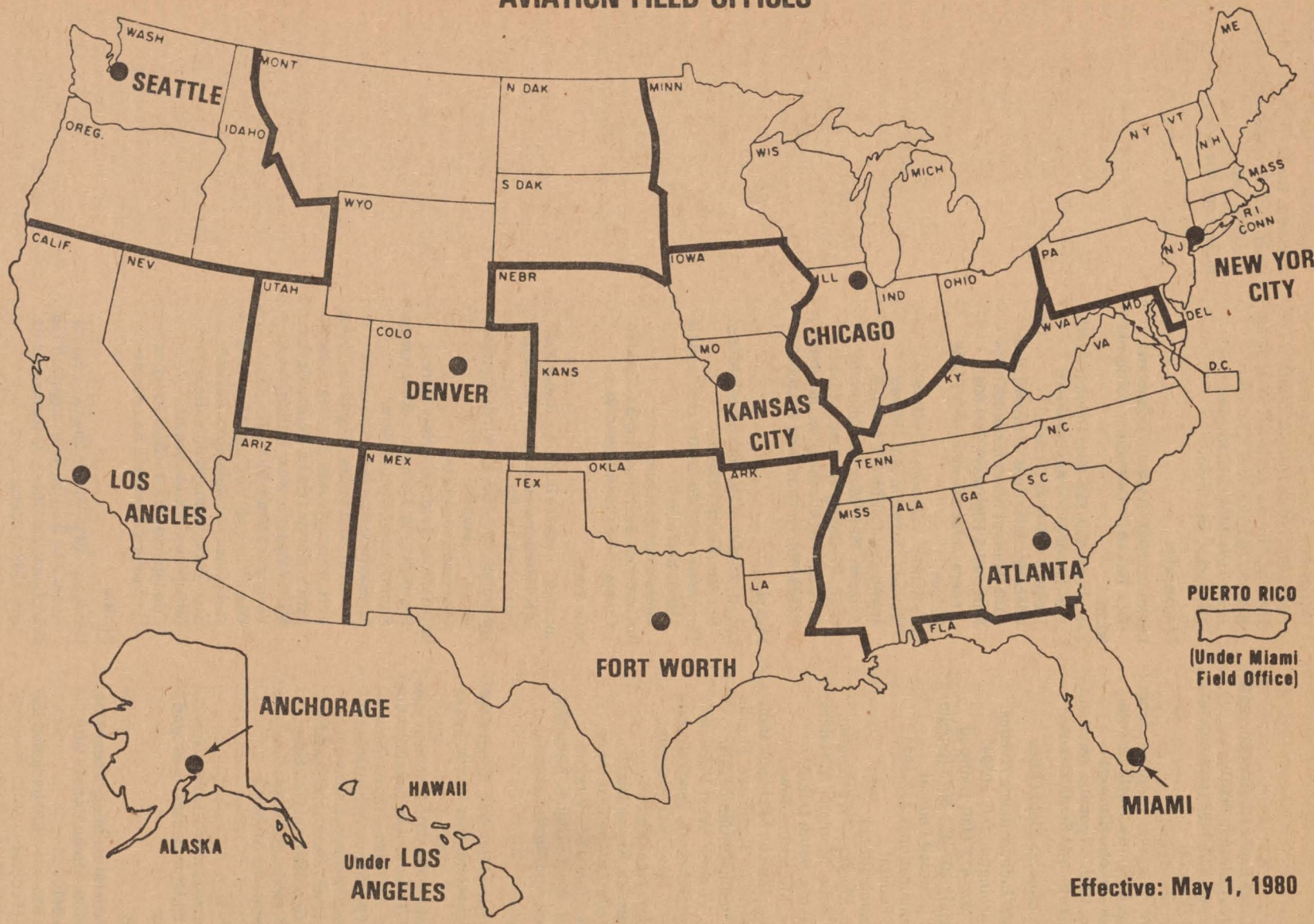
Location: 19415 Pacific Highway South, Room 303, Seattle, Washington 98188.
Telephone: 206–764–3782 (commercial); 399–3792 (Federal telecommunications).
Jursidiction: *Aviation*—Washington, Oregon, and Idaho. *Railroad*—Washington, Oregon, and Idaho.

William L. Lamb,
Chief, Field Investigation Division.
March 28, 1980.

BILLING CODE 4910–58–M

NATIONAL TRANSPORTATION SAFETY BOARD

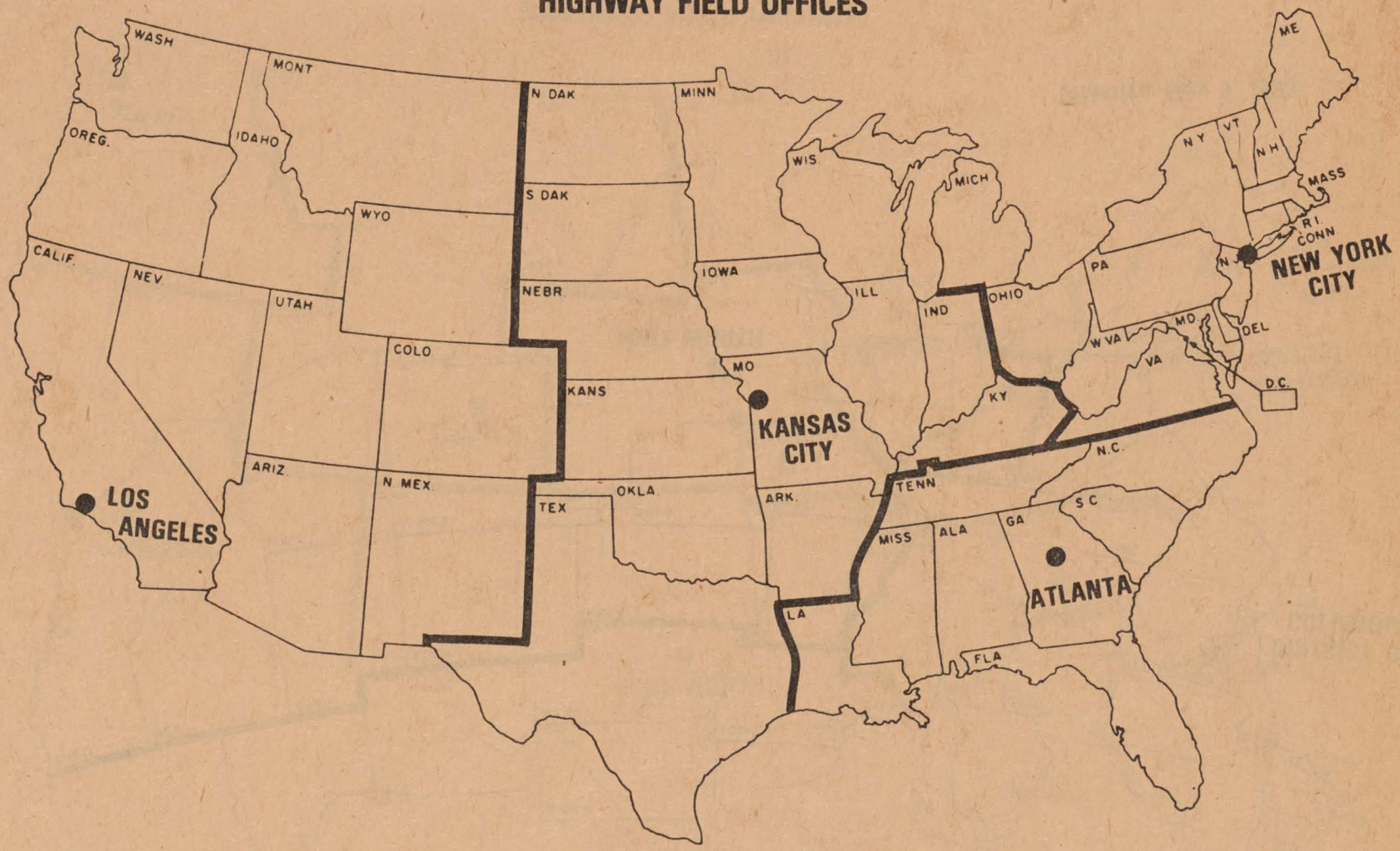
AVIATION FIELD OFFICES



Effective: May 1, 1980

NATIONAL TRANSPORTATION SAFETY BOARD

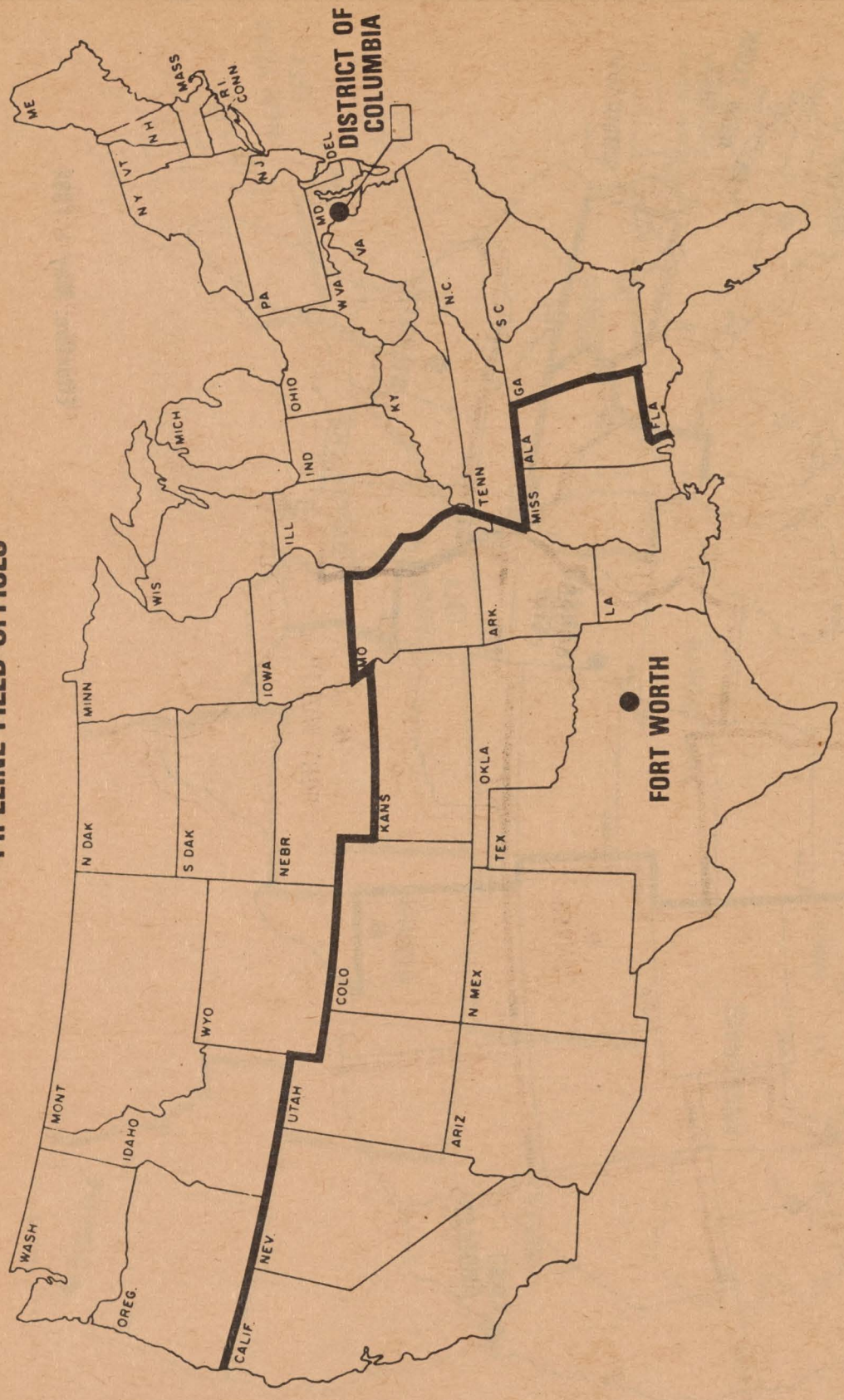
HIGHWAY FIELD OFFICES



Effective: May 1, 1980

NATIONAL TRANSPORTATION SAFETY BOARD

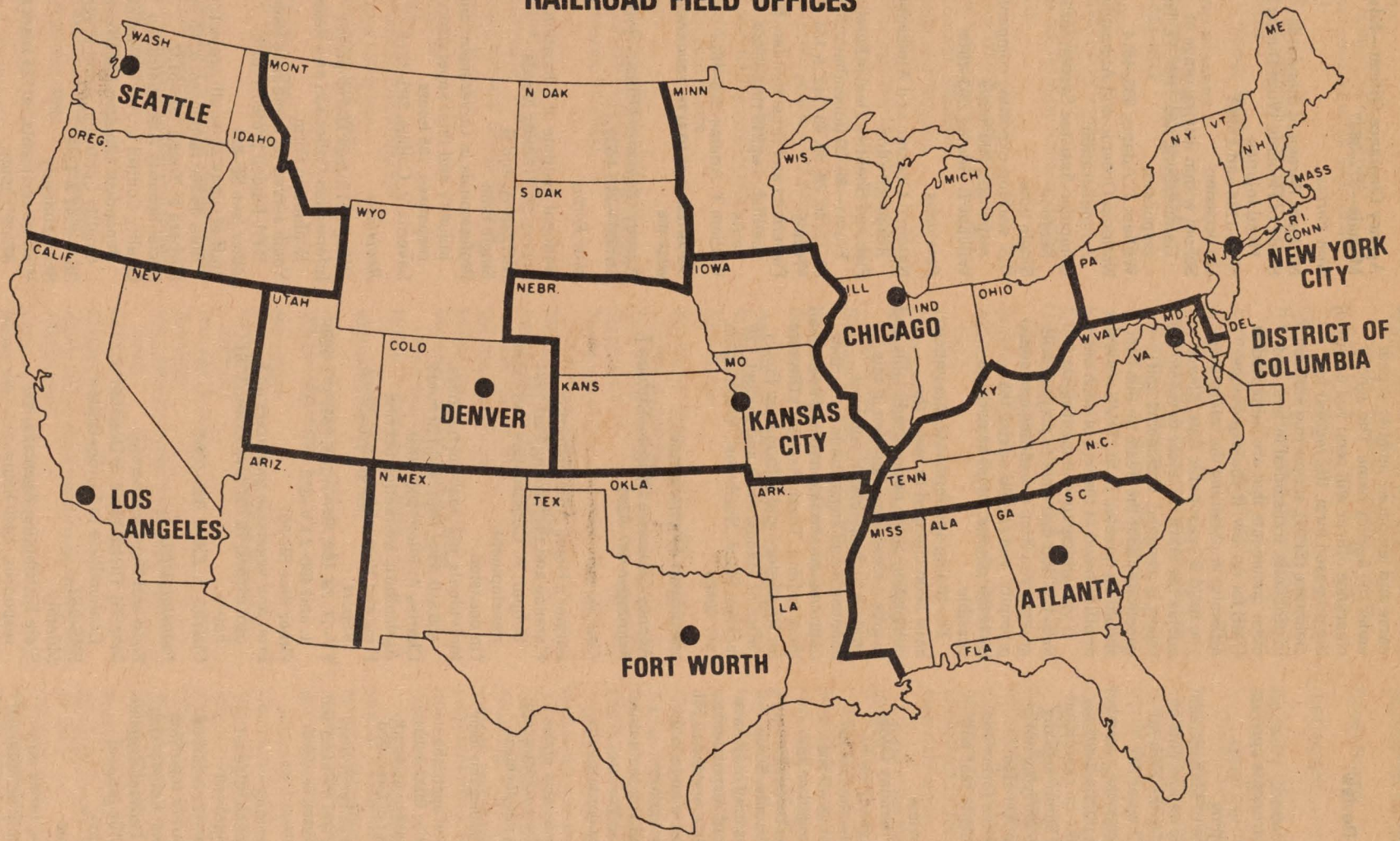
PIPELINE FIELD OFFICES



Effective: May 1, 1980

NATIONAL TRANSPORTATION SAFETY BOARD

RAILROAD FIELD OFFICES



Effective: May 1, 1980

[FR Doc. 80-10148 Filed 4-2-80; 8:45 am]
BILLING CODE 4910-58-C

OFFICE OF MANAGEMENT AND BUDGET

Agency Forms Under Review

March 31, 1980.

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 is responsibility under the Act also considers comments on the forms and recordkeeping requirements that will effect the public .

List of Forms Under Review

Every Monday and Thursday OMB publishes a list of the agency forms received for review since the last list was published. The list has all the entries for one agency together and grouped into new forms, revisions, extensions, or reinstatements. Some forms listed as revisions may only have a change in the number of respondents or a reestimate of the time needed to fill them out rather than any change to the content of the form. The agency clearance officer can tell you the nature of any particular revision you are interested in. Each entry contains the following information:

The name and telephone number of the agency clearance officer (from whom a copy of the form and supporting documents is available);
the office of the agency issuing this form;
the title of the form;
the agency form number, if applicable;
how often the form must be filled out;
who will be required or asked to report;
an estimate of the number of forms that will be filled out;
an estimate of the total number of hours needed to fill out the form; and the name and telephone number of the person or office responsible for OMB review.

Reporting or recordkeeping requirements that appear to raise no significant issues are approved promptly. Our usual practice is not to take any action on proposed reporting requirements until at least ten working days after notice in the **Federal Register** but occasionally the public interest requires more rapid action.

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. The agency clearance officer will send you a copy of the proposed form, the request for clearance (SF83), supporting statement, instructions, transmittal letters, and other documents that are submitted to OMB for review. If you experience difficulty in obtaining the information you need in reasonable time, please advise the OMB reviewer to whom the report is assigned. 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 Jim J. Tozzi, Assistant Director for Regulatory and Information Policy Office of Management and Budget, 726 Jackson Place, Northwest, Washington, D.C. 20503.

DEPARTMENT OF AGRICULTURE

Agency Clearance Officer—Richard J. Schrimper–447–6201.

New Forms

Farmer's Home Administration
Planning and Performing Part 1924 Subpart A, Construction and other development
On occasion
Individuals and nonfarm business, 458,510 responses, 450,110 hours
Charles A. Ellett, 395–5080.
Agricultural Marketing Service
Fruit and Vegetable Market News Report
FV–17, 29, 100, 100–1, 116, 351, 372, 498–1, and 498–2 FV–372
Other (See SF–83)
Fruit and vegetable producers and processors, 15,734 responses, 3,181 hours
Charles A. Ellett, 395–5080

Reinstatements

Food and Nutrition Service
Monthly Distribution of Donated Commodities to Family Units
FNS–152
Monthly
State Distribution Agencies, 360 responses, 1,440 hours
Charles A. Ellett, 395–5080

DEPARTMENT OF COMMERCE

Agency Clearance Officer—Edward Michals—377–3627

New Forms

National Bureau of Standards
Study of Helmets Worn During Football Head Injuries
NBS–1138 and 1138*A*
On occasion
School within driving range of Gaithersburg, Md. Hav. Ft. Tm., 1,000 responses,
William T. Adams, 395–4814
National Oceanic and Atmospheric Administration
Computer-Assisted System for Export of Seafood
Single time
U.S. seafood-exporting companies, 1,500 responses, 200 hours
William T. Adams, 395–4814

Revisions

National Oceanic and Atmospheric Administration
Fish and Shellfish Dealer Purchaser Forms—88–20 (amendment)
88–12, 20, 29, 30, 43, 142, & 154
Weekly
Fishermen and firms that buy fish and shellfish, 144,249 responses, 7,512 hours
William T. Adams, 395–4814

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Agency Clearance Officer—Joseph J. Strnad—245–6511

New Forms

National Institute of Education
Survey on Training Needs
NIE 238–A, and B
Single time
Professionals in Government and industry and their supervisors, 780 responses, 135 hours
Laverne V. Collins, 395–3214

Revisions

Office of Human Development
Information Collection and Research Evaluation Form
Youth served on a one-time basis by the RYA-funded projects form
Other (see SF–83)
Staff of runaway youth projects; client files, 34,980 responses, 8,745 hours
Barbara F. Young, 395–6132
Social Security Administration
Quality Control in Aid to Families With Dependent Children (AFDC) and Quality Control in Adult Programs
SSA–4341 & 4342
Semi-annually
Welfare recipients, 60,728 responses, 873,270 hours
Barbara F. Young, 395–6132.

Extensions

Office of Human Development
Social Services Reporting Requirements (SSRR)
Annually
State title XX agencies, 255 responses, 8,670 hours
Barbara F. Young, 395–6132.

DEPARTMENT OF LABOR

Agency Clearance Officer—Paul E. Larson—523–6341

New Forms

Employment and Training Administration
Job Corps Indochinese Refugee Report
ETA–RC25
Monthly
Contractors who operate Job Corps Centers, 840 responses, 420 hours
Arnold Strasser, 395–5080.
Employment and Training Administration
CETA Prime Sponsor Data Processing Status Survey
ETA–RC29
Annually
State and local agencies, 473 responses 39 hours
Arnold Strasser, 395–5080.
Occupational Safety and Health Administration
Pesticide Questionnaire
OSHA–153T
Single time
Manufacturers and formulators of pesticides, 270 responses, 555 hours
Arnold Strasser, 395–5080.

Revisions

Occupational Safety and Health Administration
Log of Inspection and Designation of Competent Person;
Tests
OSHA–73 & 74
On occasion
Shiprepairers and builders, 625 responses, 625 hours
Arnold Strasser, 395–5080.

Extensions

Bureau of Labor Statistics
Report on Work Stoppages
ES228
Monthly
State employment security agencies, 600 responses, 600 hours
Office of Federal Statistical Policy and Standard, 673–7974.

RAILROAD RETIREMENT BOARD

Agency Clearance Officer—Pauline Lohens—312–751–4692

New Forms

Application for Reimbursement/ Verification of Enrollment
Notice of Change in Educational Program for New Career Training Assistance
UI–112, 113 and 114
On occasion
Railroad employees, 1,025 responses, 405 hours
Barbara F. Young, 395–6132

Revisions

Referral Card, Report on Placement or Refusal of Referral
or Job Offer to Railroad Retirement Board
ES–1 and 21C
On occasion
Referral card for UI Claimants, 21,000 responses, 883 hours
Barbara F. Young, 395–6132.
Applicant's Referral Report and Referral Card
ES–20A and 20B
On occasion
Referral card for UI claimants, 10,000 responses, 250 hours
Barbara F. Young, 395–6132.

UNITED STATES INTERNATIONAL TRADE COMMISSION

Agency Clearance Officer—Charles Ervin—523–0267

New Forms

Producers' Questionnaire for Investigation Nos.
731–TA–18 thru 24
Single time
Producers of iron and steel, 38 responses, 3,040 hours
Phillip T. Balazs, 395–4814
Importers' Questionnaire for Investigation Nos.
731–TA–18 thru 24
Single time
Importers of iron and steel, 69 responses, 5,520 hours
Phillip T. Balazs, 395–4814.

VETERANS ADMINISTRATION

Agency Clearance Officer—R. C. Whitt—389–2282

Revisions

Comprehensive evaluation of Health Services
10–1465, A & B
Annually
VA patients, 35,000 responses, 8,750 hours
Laverne V. Collins, 395–3214.

C. Louis Kincannon,

Acting Deputy Assistant Director for Reports Management.

[FR Doc. 80–10140 Filed 4–2–80; 8:45 am]

BILLING CODE 3110–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 80–30]

Advisory Committees; Applicants for Membership

The Coast Guard is seeking applicants who are interested in being appointed as a member or as an alternate member on one of the following technical advisory committees:

1. Chemical Transportation Advisory Committee (CTAC)

CTAC advises the Coast Guard on rulemaking matters relating to the carriage of hazardous materials on vessels, the transfer of these materials between the vessels and shore, and waterfront facilities over which these materials move.

2. Rules of the Road Advisory Committee (RORAC)

RORAC provides advice and consultation to the Coast Guard with respect to matters concerned with proposals affecting the Navigational Rules of the Road. Emphasis in the immediate future will be on revision and unification of the current pilot rules in conjunction with the committee's past efforts to unify the present Inland Navigation Rules and on amending the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS).

In order to acquire the balance of membership required by the Federal Advisory Committee Act, the Coast Guard is particularly interested in receiving applicants from minorities, women, and public interest representatives. Selection will be based upon expertise in the subjects under consideration.

Each committee meets once or twice a year at a location selected by the sponsor. Members serve at their own expense and receive neither travel nor per diem allowances.

Interested persons should write to Commandant (G–CMC/24), U.S. Coast Guard, Washington, D.C. 20593, prior to May 1, 1980 identifying which committee they wish to apply for. Supplemental information will then be forwarded. Appointments will be announced by the Commandant.

Bruce P. Novak,

Deputy Executive Secretary, Marine Safety Council.

March 31, 1980.

[FR Doc. 80–10145 Filed 4–2–80; 8:45 am]

BILLING CODE 4910–14–M

[CGD 80-36]

Seminar To Discuss New Tanker Equipment and Construction Standards; Tanker Seminar

Purpose: The purpose of this notice is:

1. To inform the public of a seminar that will be conducted by the Coast Guard on May 30, 1980 to discuss—

a. Implementation of the final tanker regulations issued in Part V of the **Federal Register** on November 19, 1979 as mandated by the Port and Tanker Safety Act of 1978 (PTSA);

b. Future regulations to be issued under the mandate of the PTSA; and

c. Related work being conducted at IMCO; and

2. To solicit written comments and/or questions from the tanker industry regarding the regulations of November 19 and the draft regulatory guide prepared by the Coast Guard to facilitate implementation of these regulations.

Discussion: On November 19, 1979 the Coast Guard issued final rules for segregated ballast tanks (SBT), dedicated clean ballast tanks (CBT), crude oil washing (COW) systems, inert gas systems (IGS), and improved steering gear standards. These regulations are consistent with the standards developed at the Tanker Safety and Pollution Prevention (TSPP) Conference held under the auspices of the Inter-Governmental Maritime Consultative Organization (IMCO) in London during February 1978. They were issued under the mandate of Section 5 of the PTSA.

The Coast Guard has prepared a draft regulatory guide to provide background information and interpretive guidance regarding these new design and equipment standards. This guide is expected to make implementation of these regulations uniform and easier for those who must deal with them. To facilitate implementation of these detailed regulations and to answer any specific questions and/or comments pertaining to the regulations or the guide, the Coast Guard has decided to conduct a tanker industry seminar. Other provisions of Section 5 of the PTSA and related ongoing IMCO work will also be briefly discussed at this seminar. The following provides detailed information pertaining to the seminar and how to obtain a copy of the draft regulatory guide:

Date: May 30, 1980, from 9:00 AM to 5:00 PM.

Place: Room 7132, 1111 Constitution Ave. N.W., Internal Revenue Service Building, Washington, D.C. For security reasons, the entrance on Constitution Ave. must be used when entering the building.

Audience: Interested tanker industry representatives. Notification of attendance must be received in writing by Mr. Joseph J. Angelo, U.S. Coast Guard (G-MMT-1/13), 2100 Second Street S.W., Washington, D.C. 20593 at least one week prior to the seminar.

Objective:

1. To provide a brief overview of the tanker standards mandated by the PTSA and related ongoing IMCO work.
2. To provide a brief discussion and description of the new equipment and construction standards.
3. To discuss and answer any specific questions pertaining to the regulations and the Coast Guard's draft regulatory guide.

Equipment and Construction Standards to be Addressed:

1. Segregated Ballast Tanks.
2. Protectively Located Segregated Ballast Tanks.
3. Dedicated Clean Ballast Tanks.
4. Crude Oil Washing Systems.
5. Inert Gas Systems.
6. Improved Steering Gear Standards.

How to Obtain Documents: Copies of the subject regulations and the draft regulatory guide can be obtained by contacting Mr. Angelo at the address listed under *Audience* or by calling (202) 426-4431. It is recommended that anyone interested in participating in the seminar obtain copies of both the regulations and the guide prior to attending the seminar.

Format: The main purpose and major portion of this seminar will be aimed at answering any questions and/or comments of the tanker industry regarding the regulations of November 19 and the guide. To conduct a successful seminar and to allow the Coast Guard to provide meaningful, useful answers to the questions and/or comments, it is imperative that the questions and/or comments be received by the Coast Guard in writing at least TWO WEEKS PRIOR TO THE SEMINAR. They should be submitted to Mr. Angelo at the address listed under *Audience*. All written questions and/or comments that are received two weeks prior to the seminar will be answered at the seminar. If time permits, oral questions and/or comments will be taken from the floor after all written ones have been answered.

Seminar Outline:

1. Introduction and opening remarks.
2. Overview of the new tanker standards and related IMCO work.
3. Discussion and description of the equipment and construction standards, answering written questions where appropriate, as follows:

A. Steering gear.
B. Inert gas systems.
C. SBT, CBT, and COW systems.

4. Discussion of the Coast Guard draft regulatory guide, answering questions where appropriate.
5. General discussion and question and answer period for oral questions, if time permits.

Person to Contact: For any questions regarding the Tanker Seminar or this Notice, contact Mr. Angelo at (202) 426-4431.

Dated: March 27, 1980.

Henry H. Bell,

Rear Admiral, U.S. Coast Guard Chief, Office of Merchant Marine Safety.

[FR Doc. 80-10150 Filed 4-2-80; 8:45 am]

BILLING CODE 4910-14-M

Federal Highway Administration

Environmental Impact Statement; Lancaster County, Neb.a

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Lancaster County, City of Lincoln, Nebraska.

FOR FURTHER INFORMATION CONTACT: Walter Running, Federal Highway Administration, Federal Building, 100 Centennial Mall North, Lincoln, Nebraska 68508, Telephone: (402) 471-5527; or Richard Erixson, Public Works Department, 555 South 10th Street, Lincoln, Nebraska 68508, Telephone (402) 473-6566.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Nebraska Department of Roads and the City of Lincoln, will prepare an environmental impact statement (EIS) for the proposed Northeast Diagonal, a major urban arterial on a new location, from the east edge of the Central Business District of Lincoln, to 27th and Fair Street. Project length is 1.7 miles.

A draft 4(f) evaluation will also be prepared, addressing possible impacts to University of Nebraska recreation fields. Probable impacts include relocation of families and businesses, and modifying access to some properties. Project corridors have potential involvements with the 100-year floodplain and historic buildings.

Needs which would be fulfilled by the proposed action include: (1) Improved traffic capacity, (2) Improved access to the Central Business District, (3) Removing arterial traffic through the

UNL campus, (4) Separate conflicting land uses, (5) Improve safety, and (6) Save energy. The project is consistent with the City-County Comprehensive Plan.

Alternatives being considered include the "do nothing" construction in a 19th Street corridor, and construction in a 22nd Street corridor.

Early coordination through meetings and correspondence will be attained with the public; Lincoln/Lancaster County Railroad Transportation Safety District; State Fair Board; University of Nebraska; State Historical Society; and other local, State, and Federal agencies. A formal scoping meeting will not be held.

Issued on: March 26, 1980.

Steiner M. Silence,

Director, Office of Environment & Design.

[FR Doc. 80-10021 Filed 4-2-80; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement; Lewis & Clark County, Mont.

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise that an environmental impact statement will be prepared for three proposed highway projects in Lewis & Clark County, Montana.

FOR FURTHER INFORMATION CONTACT: Mr. William S. Dunbar, Progam Development Engineer, Federal Highway Administration, Federal Office Building, 301 S. Park, Drawer 10056, Helena, Montana 59601, Telephone (406) 449-5310; or Mr. Steve Kologi, Chief, Preconstruction Section, Montana Department of Highways, 2701 Prospect Street, Helena, Montana 59601, Telephone (406) 449-2495.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Montana Department of Highways, will prepare an environmental impact statement (EIS) on a proposal to improve 0.3 mile of Cruse Avenue and 1.3 miles of Last Chance Gulch in Helena, Montana. The improvement will extend from 6th Avenue and Cruse Avenue to North Montana at Cedar Street. Three separate projects are involved but the EIS will evaluate both the individual and combined effects of the proposed projects.

Proposed Project 5815(1), Cruse Avenue, will begin at 6th Avenue extending northerly on new alignment about 0.3 mile to a connection with Neil Avenue. The alternates to be studied will be confined within a narrow corridor between Jackson and Logan Street. The proposed action will result in the taking of some buildings and vacant lots. The do-nothing alternate and possible minor alternatives will be studied.

Proposed Project M 5807(1), North Last Chance Gulch, will begin at Neill Avenue and extend northerly along Last Chance Gulch about 0.45 mile to Lyndale Avenue. The area is primarily commercial and the existing facilities will not be able to handle future traffic volumes. Various proposed alternates including minor upgrading or do-nothing will be considered. No persons or businesses are expected to be displaced.

Proposed Project M 5807(2), North Last Chance Gulch, will begin at Lyndale Avenue and extend northerly along Last Chance Gulch about 0.82 mile to Montana Avenue and Cedar Street. A full four-lane facility will be studied as well as minor alternatives, such as minor widening and resurfacing, and the do-nothing alternate. It is anticipated that the four-lane section will involve right-of-way acquisition but will not require relocation of individuals or businesses.

The present alignment has two old narrow railroad grade separation structures. It is adjacent to Memorial Park so a draft section 4(f) evaluation will also be prepared as part of this project.

Early coordination with the public and appropriate local, State and Federal agencies will be accompished to assist in the identification of significant impacts. A scoping meeting was held 10:00 am March 17, 1980 at the Highway Complex, Helena, Montana. The views of interested agencies were solicited and coordination with them will continue through all stages of the development of the environmental document.

Preliminary views on impacts are as follows: Since the proposed project will improve access to the central city it is expected to be consistent with the President's Urban Policy. The effect on any sites found eligible for listing on the National register of Historic Places will be studied.

Due to the modest size of Helena, alternate modes of transportation are not considered feasible. Air Quality impacts will be briefly studied but are not anticipated to be significant.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning the proposed action and the EIS should be directed to the FHWA at the address provided above.

Issued: March 25, 1980.

Harold N. Steward,

Division Administrator, Helena, Mont.

[FR Doc. 80-10023 Filed 4-2-80; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

Automotive Fuel Economy Program; Report to Congress

March 27, 1980.

The attached document "Automotive Fuel Economy Program, Fourth Annual Report to Congress," has been prepared pursuant to Section 502(a)(2) of the Motor Vehicle Information and Cost Savings Act, (Pub. L. 92-513), as amended by the Energy Policy and Conservation Act (Pub. L. 94-163), which requires in pertinent part that "each year, beginning in 1977, the Secretary shall transmit to each House of Congress, and publish in the **Federal Register** a review of average fuel economy standards under this part."

Joan Claybrook,

Administrator.

[DOT HS-805 279]

Automotive Fuel Economy Program Fourth Annual Report to the Congress, January 1980

U.S. Department of Transportation, National Highway Traffic Safety Administration, Washington, D.C. 20590

Preface

This Fourth Annual Report to the Congress (1980) summarizes the progress made by the National Highway Traffic Safety Administration (NHTSA) during fiscal year 1979 in the implementation of the applicable sections of Title V: "Improving Automotive Efficiency," of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 *et seq.*) as amended (the Act). Section 502(a)(2) of the Act requires submission of a report and publication in the **Federal Register** (F.R.) in January of each year. Also included is a report on the utilization of advanced automotive technology required by Section 305, Title III of the Department of Energy Act of 1978 (Pub. L. 95-238).

Title V requires the Secretary of Transportation to implement a program for improving the fuel economy of new automobiles (including passenger cars and light trucks) in the U.S. market. On June 22, 1976, the authority to administer the fuel economy program was delegated by the Secretary to the Administrator of NHTSA (41 FR 25015).

NHTSA's responsibilities include (1) establishing average fuel economy

standards for manufacturers of passenger automobiles and light trucks; (2) promulgating regulations concerning procedures, definitions, and reports necessary to support the fuel economy standards; (3) the consideration of petitions for exemption from established fuel economy standards by low volume manufacturers (under 10,000 vehicles produced annually) and the establishment of alternative standards; (4) reporting to Congress annually on the progress of the fuel economy program. and (5) the execution of fuel economy enforcement activities.

Passenger car fuel economy standards have been established by Congress for Model Years 1978–1980 and 1985 and by the Department of Transportation for the 1981–84 model years. Standards for light trucks have been established by the Department of Transportation for the 1979–81 model years, and proposed standards have been issued for model years 1982–1985.

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Executive Summary

With the growing number of uncertainties revolving around the supply of petroleum the United States is faced with the necessity of fuel conservation and the development of alternatives to the use of oil. The Nation has become increasingly dependent on the actions and decisions of a few foreign governments for its oil supplies—a situation which can only be remedied by increasing domestic energy production and by reducing demand. As President Carter said in his address to the Nation in July 1979, "This intolerable dependence on foreign oil threatens our economic independence and the very security of our Nation." The need to conserve is no longer an option, it is a necessity. Every effort must be made to bring about a reduction in fuel consumption through energy conservation programs and research efforts. The automotive energy conservation program enacted after the 1973–74 Arab oil embargo is now beginning to pay off, not only to aid in near term conservation, but also to provide a means for future conservation through new technology.

The U.S. imported only 18 percent of its oil needs at a cost of $1.5 billion in 1959. Thirteen years later, imported oil accounted for only 20 percent of total consumption and cost the Nation $4.0 billion. By 1975, it was necessary to import 39 percent of the domestic demand for oil at a cost of $27.0 billion. This doubling of the amount and seven-fold increase in the cost of imported oil was the result of large OPEC price increases, falling domestic crude oil production, and continued increases in demand.

By 1978, imported oil constituted 45 percent of oil consumed and cost the Nation $42.0 billion, despite the fact that demand was growing at a slower rate. OPEC, supplying 83 percent of the U.S.'s imported oil in 1978, has taken advantage of the tight world oil market by doubling prices from $12.70 per barrel in December 1978 to more than $24.00 per barrel today. Currently, prices on the "spot" market are approaching $40 per barrel. The total U.S. bill for oil imported in 1979 is now expected to be $60.0 billion. An increase of this magnitude has had severe adverse effects on our trade balance, inflation, economic growth, unemployment, confidence in the dollar as an international reserve currency and on sales of automobiles.

The Energy Policy and Conservation Act, enacted on December 22, 1975, was designed to increase domestic energy supplies and availability, restrain energy demand and plan for coping with energy emergencies. As an integral part of its provisions for conservation, Title V, *Improving Automotive Efficiency*, was established, requiring the Secretary of Transportation to set corporate average fuel economy standards for passenger cars and light trucks. At this time, passenger car fuel economy standards have been established through the 1985 model year, when the fleet average must be 27.5 miles-per-gallon (mpg). Light truck standards have been established for the 1979–81 model years requiring achievements of 16.7 mpg for two-wheel drive (4x2) light trucks and 15.0 mpg for four-wheel drive (4x4) light trucks by 1981. In addition, light truck standards achieving even greater mpg levels have been proposed for the 1982–85 model years. Single values of 17.4 mgp for 4x2's and 15.6 mpg for 4x4's are proposed for model year 1982, whereas a range of values is proposed for model years 1983–85.

These standards make significant contributions to the Nation's total effort to conserve energy. Projected cumulative passenger automobile fuel savings from model year 1978 through model year 2000 will approximate 395 billion gallons (9.4 billion barrels). Comparable fuel savings for light trucks are estimated to be approximately 114 billion gallons (2.7 billion barrels). Thus, total fuel savings should be more than 500 billion gallons over the next 20 years. This is equivalent to a 19 percent savings compared to pre-standard consumption levels—and will provide the Nation with the equivalent of an additional 5 year supply of gasoline for its passenger car and light truck fleet.

But the benefits from the program, although increasing over time, are also being felt now. In 1979, gasoline consumption declined five percent from 1978 levels. This decrease represents a savings of 120 million barrels per year. While better trip planning, increased use of public transportation, carpools and vanpools, intermittent shortages of gasoline, higher prices, and more energy efficient driving techniques have all played a part in this reduction, increased new vehicle fuel efficiency is estimated to have contributed almost 25 percent of these savings. These improvements in fuel economy alone have reduced our trade deficit in 1979 by about $1 billion.

Using the schedule of real gasoline prices cited in Chapter I (Table I–2) the savings over the 1978–2000 period yields a combined discounted present value of approximately $215 billion (1979 dollars). In the year 2000 alone, the savings for passenger car owners are estimated to be $12.1 billion and $3.7 billion for owners of light trucks, resulting in a combined consumer

savings of $15.8 billion (1979 dollars).* The magnitude of these savings to the individual new car purchaser as well as to the Nation as a whole are also significant. The average purchaser of a 1985 model year car, for instance, is expected to realize a net savings over the vehicle's lifetime of $1,540 (present value of fuel savings minus estimated retail price increases) when compared to a model year 1977 automobile. Likewise, the average purchaser of a model year 1981 light truck is expected to realize a net savings of $1,240 over the average 1978 vehicle.

Fiscal year 1979 has been a year of re-evaluation for the Automotive Fuel Economy Program. In late 1978, Ford and General Motors sought lower passenger automobile fuel economy standards for model years 1981–84. It was the opinion of the Department of Transportation that the arguments presented by Ford and General Motors provided no statutory basis for revising the standards, and instead, that their information reinforced earlier conclusions that the current standards are both technically feasible and economically practicable. Revision of the standards thus did not appear justified.

With the onset of the gasoline shortage in the late Spring 1979 and rising gasoline prices, large new car sales plunged and small new car sales reached record highs. As a consequence of this consumer demand for more fuel efficient vehicles, sales of imports grew by an impressive 22.1 percent during 1979. In response to the shift in demand, the president of General Motors, Elliott M. Estes, reversed his company's position and announced in August that General Motors now intends to exceed the established standards:

> You can be sure, if there is any conceivable way to do so our fleet average will be more than 27.5 miles-per-gallon by 1985. And to the extent that we can offer outstanding mileage in vehicles that meet our customers' requirements for room and utility we will be encouraging the people to stay ahead of Washington, and that's good for all of us—the customer, the country and the industry.

General Motor's shift in position which was followed by statements from other companies, was reflective of changes in consumer demand and concern about long-term fuel availability. Since the early 1970's, there have been shifts in market shares for passenger cars due to increased consumer demand for more fuel efficient vehicles and because of the effects of domestic corporate strategies. During the 1973–74 oil embargo, the demand for larger automobiles declined, but returned to pre-embargo levels soon after the crisis. However, since that time, the small car market has been gaining a larger segment with the onset of the Iranian crisis and the continued diminishing supply of oil accelerating this shift. Perhaps Mr. Estes most aptly represented the manufacturers' view of the consumer shift in demand when he said, "A cat which sits on a hot stove and gets burned might forget and do it again. But twice burned is a hard lesson learned."

In June 1979, the Department of Transportation (DOT) issued a final rule which reduced the light truck, two-wheel drive standard for model year 1981 from 18.0 mpg to 17.2 mpg. The action was taken in light of new information provided to the Department by Chrysler, General Motors, and Ford which showed that the fuel economy improvement capability in light trucks was less than determined by earlier rulemaking. The standard was further reduced to 16.7 mpg upon notice from the Environmental Protection Agency (EPA) that it would not be able to approve the use of improved lubricants for use in fuel economy testing by January 1, 1980. The standard for four-wheel drive vehicles was also affected by the EPA determination and was lowered to 15.0 mpg from 15.5 mpg.

Currently, the National Highway Traffic Safety Administration (NHTSA) is engaged in light truck rulemaking for model years 1982–85. To date, the introduction of new fuel efficient light trucks has yielded encouraging results with respect to consumer acceptability of redesign for fuel efficiency. Also, the Agency is continuing to monitor and analyze the financial capabilities of the industry to make necessary investment expenditures. The proposed mpg levels are estimated to save between 11 and 17 billion gallons of gasoline over the lifetime of the model years 1982–85 fleets compared to their consumption if the fleet fuel economy remained at the level of the model year 1981 standards. This amounts to between 900 and 1,390 gallons per vehicle or a net dollar savings between $510 and $1,120 (1979 dollars) over the life of the vehicle. The final standards for the 1982 model year will be issued in March 1980 with the 1983–85 standards to be promulgated subsequently.

On December 17, 1979, the Department submitted to Congress a series of amendments for improving the fual economy program. The first recommendation was "to exempt automobile manufacturers producing fewer than 10,000 vehicles per year from both the fuel economy standards and the semiannual reporting requirements." The production volume of these manufacturers is so low that there is minimal gasoline saved through such regulation and their economic and technical capabilities to make necessary fuel economy improvements is severely limited. Also, an excise tax will have to be paid on most of these vehicles under the gas guzzler tax in the future which is a more efficient way to encourage improvements.

Secondly, the Department recommended an extension of the period for applying credits earned for exceeding fuel economy standards against penalties for violating the standards. This amendment, which proposes to extend this time period from one to three years, is designed to facilitate compliance by manufacturers in the unlikely event that they may be unable to meet the required levels during a given year due to unforeseen circumstances. It is not intended either that manufacturers, other than those that are financially troubled, would use the extended credit period routinely or that any manufacturer would exploit it to unnecessarily delay fuel economy improvements.

The third amendment would permit a manufacturer whose U.S. production of automobiles began after the Energy Policy and Conservation Act was passed in 1975, to average its domestically-produced cars with 75 percent U.S. content with its foreign-produced automobiles for purposes of fuel economy compliance. This recommendation is designed to avoid inadvertently discouraging foreign manufacturers from using U.S. content in the vehicles it produces in the United States.

In addition to its ongoing research and development activities in the investigation of advanced technology for fuel efficiency, the Agency sponsored the First International Automotive Fuel Economy Conference on October 31 through November 2, 1979, which brought together an international community of researchers on automotive fuel economy. Basic research of this nature fosters dramatic strides in the state-of-the-art through the use of advanced technology.

The Department of Transportation is working with other agencies to implement the proposed Cooperative Automotive Research Program which will expand research in automotive technology. The program will involve basic research in thermal and fluid sciences, structural mechanics,

*Conservatively assuming no new passenger car improvements beyond 1985 and no new light truck improvements beyond 1981.

electrochemistry, aerodynamics, materials sciences and processing, control systems friction and wear, and acoustics and vibration. The program will involve both industry and government funding and planning. University, industry, and Federal laboratories will perform the research to promote independent innovative ideas.

In addition, DOT is preparing to implement a proposed program for the assessment of midterm automotive technology to complement and expand its research for improvement of automotive fuel economy in the next ten years. The program is designed to identify and evaluate improved automotive technology to be utilized by manufacturers in the future. The program will include research in improved engines and drivetrains, structural design improvements and development of fuel efficient prototype passenger cars and light trucks which will demonstrate to the consumer and the industry what can be achieved with near term technology.

The Department is also examining the benefits for fuel economy improvement beyond 1985, the ability of the industry to make those improvements and the role that the Federal government will play in securing those achievements. It appears that fuel economy improvements of 20–50 percent above the 1985 standards are technically achievable, and the optimistic estimates of potential fleet fuel economy of 50 mpg for automobiles and 37 mpg for light trucks would accomplish fuel savings of 650,000 barrels per day by 1995. The Department believes that improving fuel economy should be pursued in a manner consistent with, and in order to preserve, a strong domestic automobile industry.

I. Energy Outlook

A. Introduction

As President Carter indicated in his address to the Nation on July 15, 1979:

> In little more than two decades we've gone from a position of energy independence to one in which almost half the oil we use comes from foreign countries, at prices that are going through the roof. Our excessive dependence on OPEC has already taken a tremendous toll on our economy and our people. This is the direct cause of the long lines which have made millions of you spend aggravating hours waiting for gasoline. It's a cause of the increased inflation and unemployment that we now face. This intolerable dependence on foreign oil threatens our economic independence and the very security of our Nation.
>
> The energy crisis is real. It is worldwide. It is a clear and present danger to our Nation. These are facts and we simply must face them.

The Automotive Fuel Economy Program is now in its fourth year, and continues, perhaps now even more than ever, to be instrumental in achieving the President's goals of reduced dependence on foreign oil and lower inflation and unemployment levels.

This chapter describes the contribution that improvements in new car and truck fuel efficiency are making to the conservation of petroleum in the United States, and provides a brief description of the past and future energy trends.

B. Petroleum Demand and Supply

Domestic demand for refined petroleum products, (Figure I–1) experienced a 1.9 percent average annual growth rate between 1972 and 1979. The percentage of U.S. demand for petroleum supplied by all importers more than doubled since 1960 with a peak of 48 percent of U.S. petroleum demand supplied by other countries in 1977. This percentage declined between 1978 and 1979 (January-July) by 3 percentage points. The domestic demand for petroleum products shows an increase in motor gasoline, jet fuel, distillate fuel oil, and other products; while showing a decrease in residual fuel oil and kerosene from 1977 to 1978. However, the average petroleum demand increase of 1.6 percent [1] in 1978 is relatively small in comparison with changes that occurred in earlier years,[2] and is largely the result of the congressionally set standard of 18 mpg.

The average portion of U.S. petroleum supplied by imports for 1973 to 1979 (January-July) was 41 percent. During 1978 and 1979, the percentage of imported petroleum remained stable, but the percentage supplied directly by OPEC countries declined in 1978 and the first part of 1979 (January–July). The supply disruption of Iranian fuel in 1978, together with the decreases in North African production, may account for this decrease in OPEC petroleum supply.

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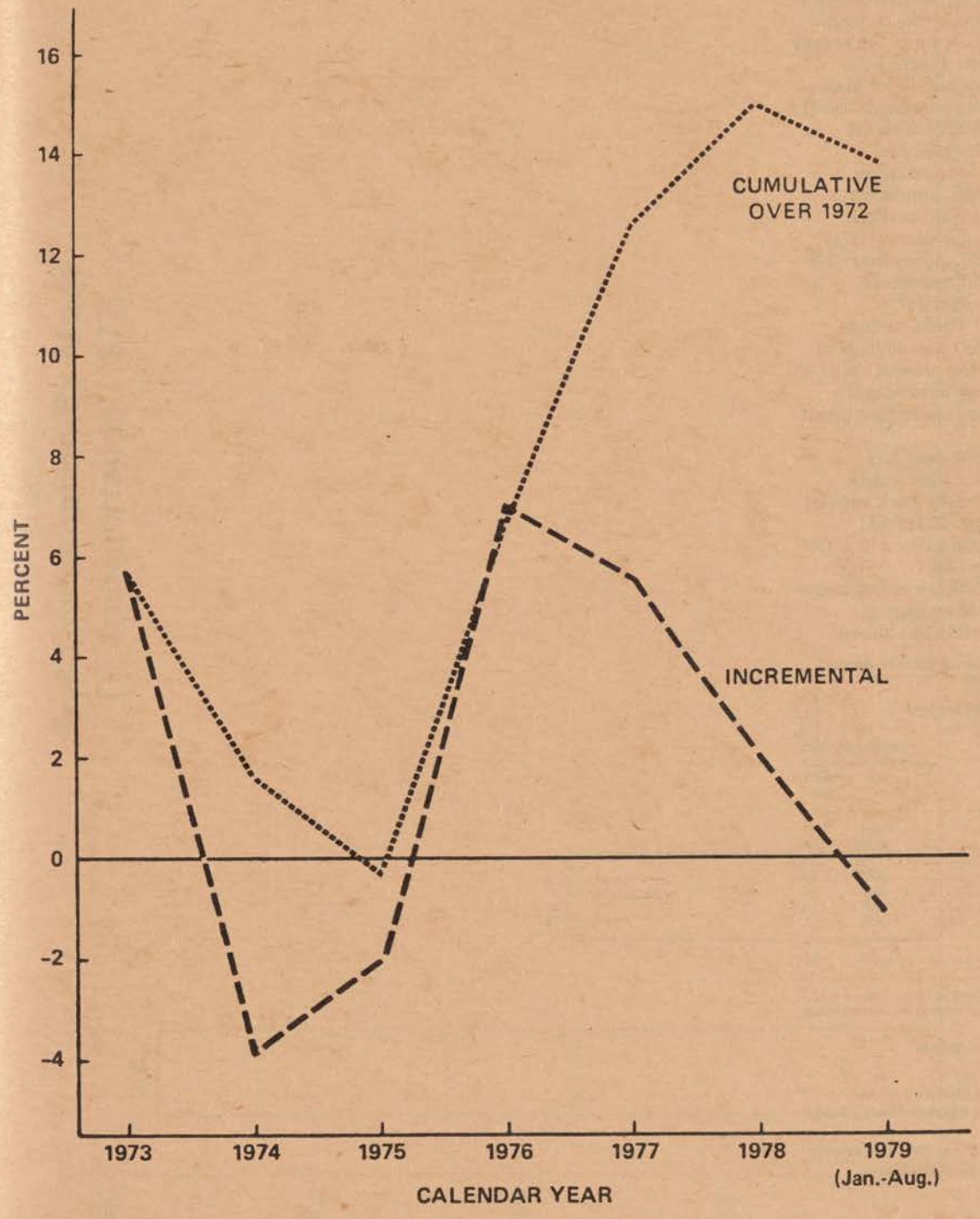
[1] Disaggregated domestic petroleum demand data used to derive this relative increase are contained in Table 21 of *The 1978 Annual Report To Congress* of the Energy Information Administration, Volume Two, p. 49.

[2] U.S. Department of Energy, Energy Information Administration *Energy Data Report,* "Petroleum Statement Monthly."

FIGURE I-1

CHANGE IN U.S. DEMAND FOR REFINED PETROLEUM PRODUCTS



Source: "Monthly Energy Review", U.S. Department of Energy, Energy Information Administration, October 1979, p. 32.

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C. Effects of Fuel Economy Standards on Petroleum Savings

Federal policies to influence energy use in transportation are critical since the transportation sector is the major consumer of petroleum-based fuels, accounting for 53 percent of total U.S. Consumption of petroleum. (See Table I–1). Passenger cars and trucks consume approximately 82.5 percent of the energy used in transportation (Figure I–2). Automobiles are responsible for about 92 percent of domestic passenger travel.[3]

Based upon compliance with the model year (MY) 1978–1985 fuel economy standards for passenger automobiles, projected cumulative passenger automobile fuel savings estimates from calendar years (CY's) 1978 through 2000 will approximate 395 billion gallons (9.4 billion barrels), or a 21 percent reduction over 1977 consumption levels.* These savings represent an estimated cost savings of $167 billion (discounted present value at 10 percent per annum), assuming the schedule of real prices of gasoline given in Table I–2.

Based upon MY 1979–1981 fuel economy standards for light trucks, projected cumulative light truck savings from CY's 1978 through 2000 will approximate 114 billion gallons or a 13.7 percent reduction over 1977 consumption levels.* These savings also represent an estimated consumer savings of approximately $48 billion.

Table I–1.—*Petroleum Consumption by Sector,* * *1978*

(Million barrels per day)

	Petroleum consumption	Percent of total consumption
Transportation	10.09	53
(Passenger cars and trucks)	(8.39)	(44)
(Other transportation)	(1.70)	(09)
Industrial	3.83	20
Residential/commercial	3.02	16
Electric utilities	1.80	10
Miscellaneous	1.93	1
Totals	18.93	100

*Source: "Annual Report to Congres 1978," Volume II, U.S. Department of Energy, Energy Information Administration, February 1979, p. 51.

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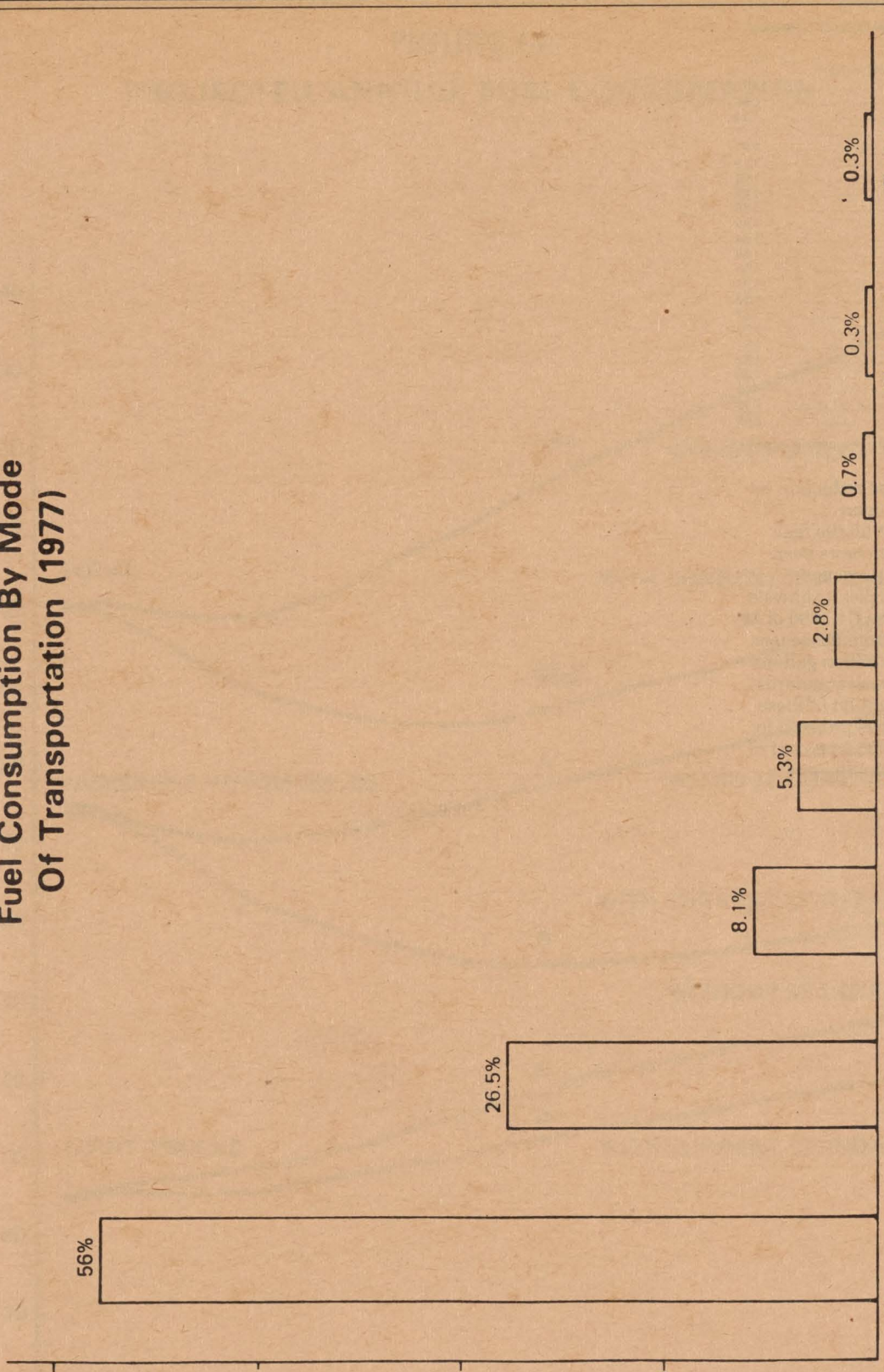
[3] *National Transportation Statistics Annual Report,* 1979, Transportation Systems Center, Table 6, p. 54.

* Based on the assumption that 1977 fleet average fuel economy levels remain through CY 2000.

FIGURE I-2

Fuel Consumption By Mode Of Transportation (1977)



Source: National Transportation Statistics, Transportation Systems Center, U.S. DOT, August 1979, p. 81.

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Table I-2.—*Estimated Average Price of Unleaded Gasoline*

[Dollars per gallon in 1979 dollars]

1978	$0.76
1979	0.95
1980	1.14
1981	1.17
1982	1.21
1983	1.24
1984	1.28
1985	1.32
1986	1.35
1987	1.40
1988	1.44
1989	1.48
1990	1.53
1991	1.57
1992	1.62
1993	1.67
1994	1.72
1995	1.77
1996	1.82
1997	1.88
1998	1.93
1999	1.99
2000	2.05

NOTE.—A 3-pct annual incrase in the real price of gasoline is assumed.

Figure I–3 illustrates the reduction in fuel consumption based upon anticipated compliance with the fuel economy standards which have been enacted to date for both passenger automobiles and light trucks. It shows a projected reduction during CY 2000 of 28 billion gallons resulting from passenger car standards, and of 8.6 billion gallons resulting from the light truck standards. Reduction in fuel consumption of these vehicles, in CY 2000, is thus projectd to be 36.6 billion gallons, or 26.8 percent of the total that otherwise would have been consumed.

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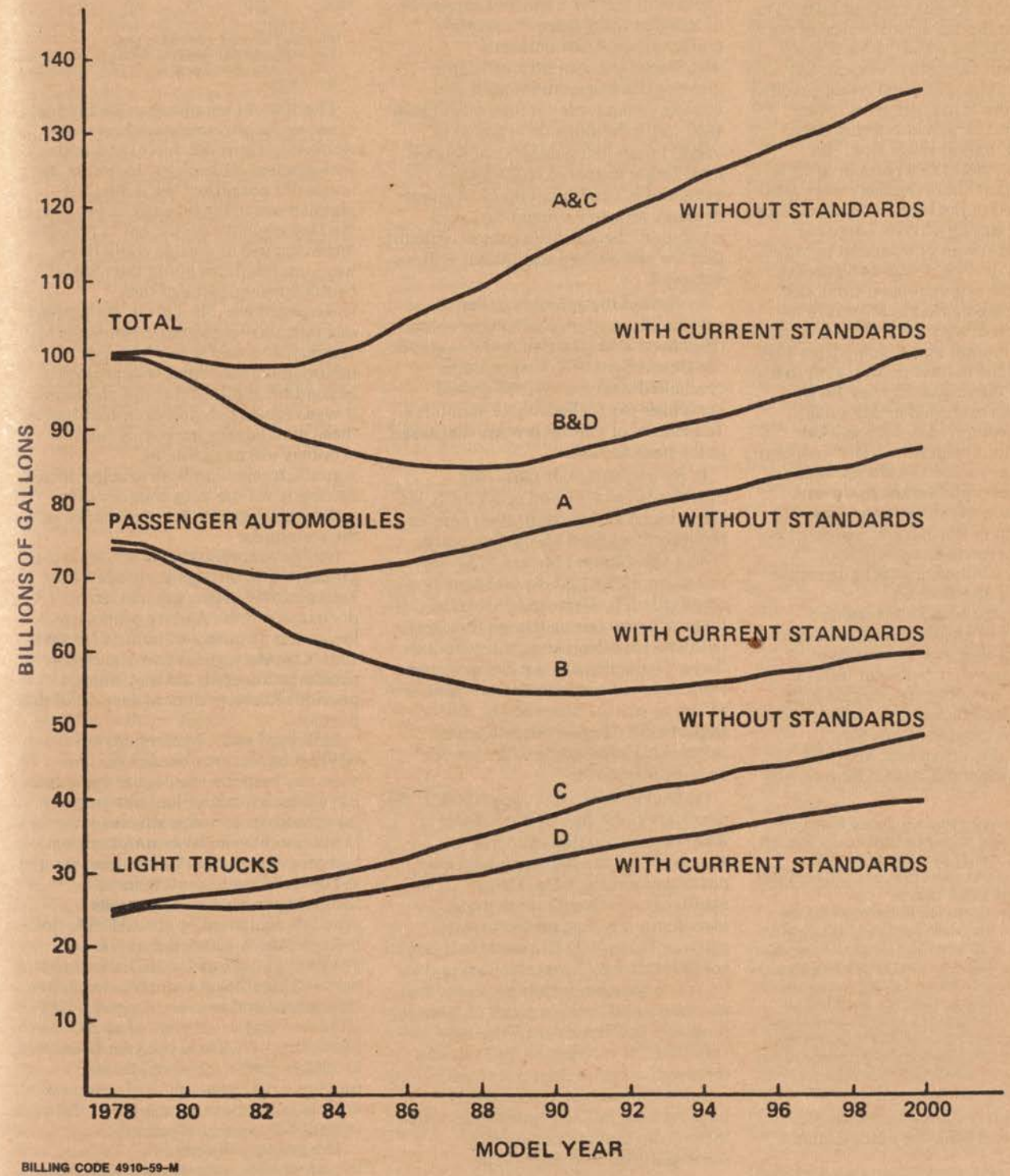
FIGURE I-3

PROJECTED ANNUAL FUEL CONSUMPTION



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II

Passenger Car Fuel Economy Activities

A. *Sales Patterns and Trends.*—The need to further improve domestic new car fuel economy was emphasized by the effects of gasoline supply restrictions during early 1979. As a consequence of limited fuel availability large new car sales plunged and small new car sales reached record highs. The increase in the small cars' share of the market reflected a shift toward more fuel-efficient vehicles in response to shortages of gasoline and rising gasoline prices. Sales of imports grew by an impressive 22.1 percent during 1979, increasing market share from 18.1 percent in 1978 to 23.3 percent in 1979.

The market share declines were most pronounced in the larger vehicle classes during the Spring of 1979. Large car market share was 24.6 percent in May 1978; in May 1979, it was 14.6 percent. Mid-size car sales dropped from 33.4 percent of the market in May 1978 to 27.1 percent in May 1979. Even compacts lost some market share, going from 10.9 percent of the market in May 1978 to 8.9 percent of the market in May 1979. Subcompact and smaller car sales soared, however. May 1978 market share of these vehicles was 31.1 percent; for the same month in 1979 the share was 49.4 percent. Market share data (November 1979) show large cars with 18.2 percent of the market; mid-size cars with 35.5 percent; compacts with 7.3 percent; and subcompacts and smaller cars having 39.1 percent.

Sales promotions and increased availability of gasoline resulted in the most recent increase in larger car market shares, but customer interest in improved fuel economy remains high. This increased demand for fuel economy has spurred industry plans for increasing fuel efficiency. Mr. E. M. Estes, President of General Motors, has stated:

> Our U.S. customers, concerned about the availability and price of gasoline, are buying with fuel efficiency paramount in their thinking. It seems clear that this will continue to be the case in the future.
>
> There is every reason to believe that the impact of the fuel shortages and higher prices that arrived in 1979 will be longer lasting than they were in 1973–74. A cat which sits on a hot stove and gets burned might forget and do it again. But twice burned is a hard lesson learned . . . . if there is any conceivable way to do so, our fleet average will be more than 27.5 mpg by 1985. Meeting the demands of our customers has traditionally been the way we've earned success in our industry.[1]

In addition to increased consumer interest in fuel-efficient automobiles, competitive pressures within the industry have also served as a driving force toward an industry mix of vehicles with substantially improved fuel economy. The industry trend toward downsizing and utilization of fuel-efficient technologies, such as front-wheel-drive, are in part the result of manufacturers either following the successful lead of a single company or of a desire to increase or maintain market share. Most domestic manufacturers currently anticipate meeting passenger automobile fuel economy standards through model year 1985. With the sales distribution of vehicle sizes being influenced toward even larger shares of fuel-efficient vehicles by a combination of consumer demand, industry competition, and regulation, there is little reason to doubt that the established regulations will be achieved.

In view of these trends in the automobile market, changing economic conditions and manufacturers' requests, the Department of Transportation conducted a review of established passenger car fuel economy standards. The results of that review are discussed in the next section.

B. *Re-evaluation of 1981–1984 Standards.*—At the end of CY 1978, the Department of Transportation received requests from Ford Motor Company (Ford) and General Motors (GM) for reduction of the 1981–84 fuel economy standards. The Department treated these submissions as though they were petitions for rulemaking. It concluded that no reductions in the fuel economy standards were warranted as a matter of law or policy. Accordingly, the Department decided not to open a rulemaking proceeding to reduce the 1981–84 standards.

(1) Background.—On June 30, 1977, the Secretary published in the **Federal Register** average fuel economy standards for the 1981–84 model year passenger automobiles. These standards, along with most recent manufacturers' mpg projections are given in Table II–1. The standards were set at levels which were determined to be the "maximum feasible average fuel economy level" and to result in "steady progress" toward meeting the 1985 standard. As interpreted, the "steady progress" criterion does not require equal increments of fuel economy improvement in each model year, only increments that are not grossly disproportionate to each other.

Table II–1.—*Passenger Automobile Fuel Economy Standards and Manufacturers' MPG Projections*

	Standard	GM	Ford	Chrysler	AM
1978	18.0	[1] 19.0	[1] 18.4	[1] 18.4	[1] 18.6
1979	19.0	[2] 19.1	[2] 19.1	[2] 120.4	[2] 19.9
1980	20.0	[3] 21.3	[3] 21.6	[3] 20.3	[3] 21.5
1981	22.0	[4]	[4]	[4]	[4]
1982	24.0	[4]	[4]	[4]	[4]
1983	26.0	[4]	[4]	[4]	[4]
1984	27.0	[4]	[4]	[4]	[4]
1985	27.5	[4]	[4]	[4]	[4]

[1] Final CAFE reported to NHTSA by EPA.
[2] 1979 Mid-Model Year Report to NHTSA by manufacturer.
[3] 1980 Pre-Model Year Report to NHTSA by manufacturer.
[4] Not available.

The 1981–84 standards reflected fuel economy improvements achievable through the introduction of available fuel-efficient technology. However, the levels did not reflect the industry's planned use of diesel engines because of the Department's policy not to presume increased use of diesels while there were uncertainties about the public health consequences of their widespread use. No shift in the product mix (such as selling more compacts and subcompacts and fewer full and intermediate size cars) was projected beyond the plans of the manufacturers. It was recognized, however, that both of these methods for improving fuel economy are available to manufacturers, and both provide some flexibility for the auto companies in selecting a program for compliance with the standards.

(2) *The Manufacturer's Requests.*—In January 1979, through early May 1979, Ford and GM began submission of documents to the Agency proposing lower fuel economy standards for 1981–1984. Chrysler agreed that standards should be lowered, but they did not provide extensive data in support of that position.

Both Ford and GM claimed that NHTSA had overestimated the fuel economy benefits that would come from certain technologies, had not properly taken into account the effects of changes in automotive emission standards and test procedures, and had underestimated the costs of implementing those technologies, particularly on the schedule indicated by the NHTSA. Both manufacturers claimed that less stringent standards for 1981–84 would permit a significant reduction in capital investment and in new car prices. GM indicated that a schedule of standards increasing by 1.5 mpg per year from 1980 to 1985 (a linear schedule) would provide a net economic saving to new vehicle purchasers, compared to the current schedule of standards.

The primary thrust of the manufacturers' submissions was that consumers would be better off (in the

[1] University of Michigan Automotive Seminar, Traverse City Michigan, August 1, 1979.

sense of out-of-pocket expenses) under less stringent fuel economy standards than under current standards. The basis for this argument was that the manufacturers would use in the near term the most cost-effective methods for improving fuel economy (those with the largest fuel economy benefit for a given initial vehicle price increase) and that the technologies needed to comply with standards for the mid-1980's will be the more costly remaining items. GM indicated that a reduction in the standards through model year 1984 would provide more time for them to develop new technology to meet the later standards, and that the new technology would be more desirable from the consumer's viewpoint.

Although the Ford and GM submissions called into question several of the detailed projections in the agency's standard setting analysis and in its analysis for the 1979 Report to Congress, the fundamental conclusion that the current standards are feasible was not challenged. Both Ford and GM submitted product plans for meeting the current standards which differ from each other significantly and differ from the paths projected by NHTSA in the 1981–84 rulemaking and in the 1979 Report to Congress, although Ford's plan was somewhat similar to the NHTSA's analysis for Ford.

(3) *NHTSA Analysis.*—(a) *Statutory Considerations.*—Section 502(f) of the Act provided the legal framework for responding to Ford's and GM's submissions. That section states that passenger automobile fuel economy standards for 1981–85 may be amended only if the basic requirements of the law applicable to their original establishment are met. In the case of the 1981–84 standards, those standards must be set at a level which available information and analysis shows to be the "maximum feasible average fuel economy level" and which will result in "steady progress" toward meeting the standard for model year 1985. The 1985 standard also must be established at the "maximum feasible" level if it is amended. The schedule for fuel economy standards proposed by Ford and GM would certainly satisfy the statutory "steady progress" requirement, since they would result in equal increments of fuel economy improvement in each year. Therefore, the key issue in addressing the manufacturers' analyses advocating a reduction of the fuel economy standards was whether the reduced standards would satisfy the "maximum feasible" requirement.

Section 502(e) of the Act requires that the Secretary of Transportation, in determining the maximum feasible average fuel economy level, consider four factors: (1) technological feasibility, (2) economic practicability, (3) the effect of other Federal motor vehicle standards on fuel economy, and (4) the need of the nation to conserve energy. The Agency's interpretation of these four considerations has been discussed in previous rulemaking documents, most completely in the June 30, 1977, decision of the 1981–84 passenger car fuel economy standards.

In addition to reconsidering the applicable statutory criteria, the Agency performed a year-by-year cost-benefit analysis of the two fuel economy schedules to evaluate the manufacturers' claims that lower fuel economy standards would have greater net benefit to consumers.

(b) *Technical Analysis.*—The Agency views the main purposes behind the enactment of the fuel economy provisions of the Energy Policy and Conservation Act (EPCA) to be concern over our increasing vulnerability to foreign suppliers of petroleum and the serious national problems of increasing fuel costs and disruptions in supply. At the same time, the Agency recognizes that both the public and the government are intensely concerned about increases in prices and costs in the U.S. and world economies. The Ford and GM arguments did bear on that matter. Therefore, the Agency carefully examined the costs and benefits to consumers of the current passenger car fuel economy standards, as well as the lower alternative proposed by the manufacturers to determine the cost-effectiveness of each alternative.

The procedure used by the Agency to evaluate the consumer price impacts of the fuel economy standards differed in several important respects from the procedure the Agency would use in a statutory rulemaking proceeding. First, the effects of the standards on the consumer were analyzed using a straightforward cost-benefit analysis, looking at readily quantifiable costs and benefits associated with the standard. This approach was adopted as a method of measuring consumers' out-of-pocket expenditures and did not consider various indirect benefits of energy conservation (such as the effect on national security of high rates of oil imports).

The second difference between the Agency's analysis in this case and a normal, standard-setting analysis is that price increases were calculated based on the manufacturers' product plans (modified minimally by NHTSA) rather than on a compliance plan developed entirely by the Agency. In setting fuel economy standards, the Agency adopts a path that generally minimizes cost and risk in order to demonstrate what is *feasible*. In this analysis, the Agency did not make such a determination but merely examined the companies' present plans for compliance.

The final difference between this analysis and standard-setting is that the agency relied on manufacturer-supplied information almost exclusively in determining the vehicle price increases due to fuel economy standards. In rulemaking, on the other hand, the Agency would attempt to ascertain how large any initial price increases (if any) *need* be to cover the manufacturers' costs.

The Agency's analysis did make limited revisions to the manufacturers' product plans, however. Some items in those plans were believed to be unlikely candidates for actual inclusion in production vehicles, because of their high price and minimal fuel economy benefit. For that reason, and especially because these items unnecessarily increased consumer prices, the items were deleted in NHTSA's analysis. The adjusted product plans retained the basic technological and marketing strategies of the companies. No adjustment was made to the manufacturer's plans to reflect recent increases in demand for more fuel efficient vehicles and engines. In general, the NHTSA believes that the auto makers have been somewhat conservative in their estimates of the potential fuel economy improvement of certain technologies.

Two aspects accounted for most of the differences in fuel economy improvements estimated by the manufacturers and by NHTSA. These were the impacts of EPA requirements and manufacturers' decisions on how to meet them.

First, the Agency's analysis makes an allowance for possible reductions in fuel economy associated with EPA's modifications to its test procedures and emissions requirements. Second, the analysis did not include considerations of the possible impact of emissions standards being promulgated for diesel engine particulates, nor the impact of requests for waivers of the diesel standard for oxides of nitrogen. These actions could have an effect on the types and sizes of vehicles in which diesel engines can be used and the fuel economy benefit which would result from their use, but the EPA decisions on these matters have not been made. The high degree of uncertainty related to EPA's decision on diesel particulate

standards was the principal factor leading to the exclusion of any improvements in fuel economy from the analysis. The NHTSA therefore assumed no use of diesel engines for fuel economy improvements.

Based on these factors, the Agency estimated that for the 1981–85 period as a whole, the existing standards will save new car purchasers an additional $500–$680 million (discounted to 1980) compared to the linear schedule, or between $10 and $14 per car. Over a wide range of gasoline prices, the current schedule of standards has greater net consumer benefits than a linear schedule. As the price of gasoline rises, relative to manufacturing costs, the benefits of the existing standards, compared to those advocated by Ford and GM, will continue to increase.

(c) *The Need of the Nation to Conserve Energy.*—Although the numerical difference between the current fuel economy standards and a "linear schedule" may appear small, the linear schedule would result in the consumption of approximately 7.7 billion gallons more gasoline over the life of the 1981–84 passenger automobile fleet than would the current standards. The current standards will produce total gasoline savings of about 60 billion gallons (1.4 billion barrels) over the life of the 1981–85 fleet, compared to maintaining the 1980 standard of 20 mpg over that period (see Table II–2).

Table II–2.—*Comparison of Lifetime Fuel Consumption for Alternate Fuel Economy Schedules*

Model year	Projected domestic vehicle production (millions)	20 MPG	Current schedule [1]	Linear schedule
1981	9.6	56.6	51.5	52.7
1982	9.7	57.2	47.7	49.8
1983	9.8	57.8	44.5	47.2
1984	10.0	59.0	43.7	45.4
1985	10.1	59.6	43.3	43.3

[1] Lifetime fuel consumption (billion gallons) current schedule.

Fuel Savings for Alternate Schedules.—*Lifetime Fuel Savings (Billion Gallons)*

Model year	Current schedule over constant 20 MPG	Linear schedule over constant 20 MPG	Current over linear
1981	5.1	3.9	1.2
1982	9.5	7.4	2.1
1983	13.3	10.6	2.7
1984	15.3	13.6	1.7
1985	16.3	16.3	—
Total	59.5	51.8	7.7

Further, the national expenditures for imported oil are a major factor in our persistent foreign trade deficit, which in turn affects the value of our currency in foreign markets, the prices we must pay for foreign goods, and the overall rate of inflation. All of these petroleum related consequences are significant.

Given the propects for sharply higher gasoline prices during the period in which the 1981–85 passenger car fleet will be on the road, it is likely that consumers will be better off under the current standards than under a less stringent schedule, even ignoring the unquantifiable social costs.

(4) *Conclusions.*—The arguments submitted by Ford and GM provided no statutory basis for revising the standards. If any thing, the information supplied by the two principal manufacturers reinforced the earlier conclusions that the current standards comply with all requirements of the Act and are both technologically feasible and economically practicable, since both companies project being able to meet the current standards. Existing passenger car fuel economy standards have encouraged manufacturers to offer improved product lines of fuel-economical cars which are also being demanded in the market. Average fuel economy standards for model year 1979 have been met, and exceeding the 1980 fuel economy goals is projected by the companies, as shown in Table II–1. Revision of passenger car fuel economy standards did not, therefore, appear justified. This is not to say, however, that review and re-evaluation of the standards may not be necessary as economic conditions change within the industry and the rest of the economy. NHTSA is committed to promulgating fuel economy levels which are consistent with changing technological and economic conditions, and will review established standards as conditions warrant.

III

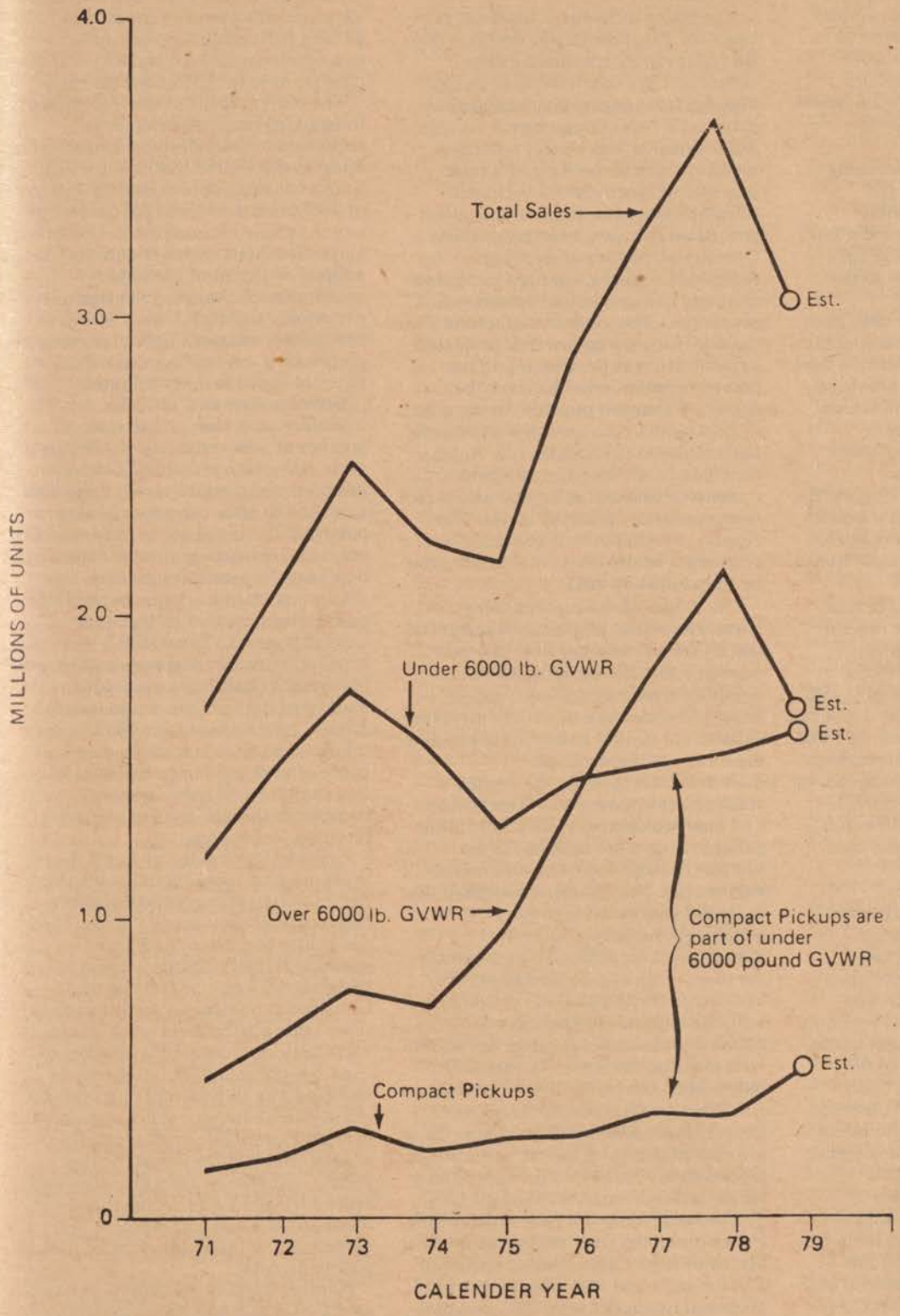
Light Truck Fuel Economy Activities

A. *Sales Patterns and Trends.*—1. *Historical Sales.*—Throughout the seventies, the light truck market has exhibited a high level of growth. In 1971, total sales were nearly 1.7 million. By 1978, sales had increased by more than a factor of two, to about 3.7 million units.

The NHTSA believes this rapid growth will not continue into the eighties and that 1979 represents a turning point for the market. The 1979 sales were down to approximately 3.1 million units or, about where the 1977 sales had been.

A more detailed lood at the growth of the light truck market is provided in Figure III–1, where the sales of Class I (up to 6,000 lb. Gross Vehicle Weight Rating (GVWR) and Class II (6,001 to 10,000 lb. GVWR) trucks ar shown for the period 1971 through 1979. Class I sales were 29 percent higher in 1978 than in 1971, and sales of the heavier weight trucks grew 338 percent higher in 1978 than in 1971. The heavier trucks accounted for about 29 percent of the total light truck market in 1971. In 1978, they accounted for 58 percent of the total light truck market. The trend in the 0–6,000 lb. GVWR trucks between 1971 and 1979 showed an increase of nearly 16,000 units per year. The 6,001–10,000 bl. GVWR trucks increased about 180,000 units per year in this time period. The rapid growth in the Class II trucks can be traced to the 1975 model year. One possible cause is the imposition of more stringent emission standards for the 6,000 lb. GVWR-and-under category in 1975 which raised the relative cost of owning and operating these vehicles. As a result, manufacturers sought to sell more of the heavier-rated trucks and avoid the standards. The behavior of the market in the 1973–1974 energy shortages is important in estimating future sales of light trucks. In 1973, the sale of the 0–6,000 lb. trucks peaked at over 1.7 million units. In 1974, this dropped to about 1.5 million, and in 1975 it dropped to about 1.3 million. By 1978, it has not yet regained the 1973 peak. Sales of these trucks have continued declining through 1979. Heavier truck sales experienced a slight drop between 1973 and 1974, and then went on to increase every year through 1978; however, during the first ten months of 1979, class II truck sales have fallen nearly 25 percent as fuel prices rose and gasoline availability became more uncertain.

FIGURE III-1
Historical Sales



Source: NHTSA Light Truck Data Base

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Historical sales data also show that the market shares of compact trucks has remained relatively constant during the period 1970–1978 at about 9.5 percent. Between 1978 and 1979, in an apparent reaction to the fuel situation, compact truck sales rose by an estimated 39 percent, while all other truck sales decreased by 15 percent. The 1979 market share for compact trucks, based on the first ten months of 1979 is estimated at 14.2 percent.

B. *1981 Light Truck Fuel Economy Standards.*—In June of 1979, the National Highway Traffic Safety Administration (NHTSA) issued a final rule which reduced the average fuel economy standard applicable to two-wheel drive (4x2) light trucks, manufactured in model year 1981, from 18.0 mpg to 17.2 mpg. The review action was taken in response to a petition from Chrysler Corporation which provided NHTSA with new information which indicated that their capability of improving the fuel economy of those trucks was less than had been determined in earlier rulemaking. At the same time, Chrysler's request to reduce the fuel economy standards applicable to the four-wheel drive (4x4) light trucks was denied.

Upon indication that Chrysler was having difficulties in working toward compliance with 1981 standards, NHTSA investigated other vehicle manufacturers' abilities to comply with the 1981 standards. Ford projected being able to achieve 17.6 mpg for its 1981 4x2 fleet and GM projected its improvement capability to be 16.2 mpg. Subsequent to this investigation, increased market demand for fuel-efficient vehicles has led the manufacturers to project that they will be able to exceed the standards (excluding Chrysler).

NHTSA agreed with the positions taken by Chrysler and the other companies in most respects, the exception being a disagreement about whether or not the use of improved lubricants could provide a fuel economy benefit for 1981 model year light trucks. The impact on the standards of this disagreement was contingent upon whether the Environmental Protection Agency (EPA) would permit the use of these lubricants in fuel economy testing by January 1, 1980. The final rule establishing the truck standards assumed that the EPA would approve the use of improved lubricants in its fuel economy testing procedures by this time. The final rule also provided that if approval were not given by that date, the standards would each be 0.5 mpg less. Because EPA has indicated that it will not be able to approve use of the lubricants by this date, each of the standards will indeed be 0.5 mpg less; i.e., 16.7 mpg for 4x2's, 15.0 mpg for 4x4's, and 14.5 mpg for limited product line vehicles.

The major differences between the basis for this most recent decision and that of the prior rulemaking are: reductions in expected fuel economy benefits from engine displacement or drive ratio reductions, engine improvements and weight reduction; modifications to the Agency's prior baseline or larger-than-anticipated effects of emission standards and test procedure changes; reduced benefits from aerodynamics and rolling resistance changes; changes in product mix; and changes in fuel economy test procedures. For other manufacturers, the main factor causing lowered projected capabilities was (in addition to the previously mentioned factors), the Agency's changed position on the effect of 1979 model year emission standards. In the 1980–81 rulemaking, the Agency concluded that the more stringent emission standards need not reduce fuel economy below pre-1979 levels. The Agency now believes that a fuel economy penalty does exist and cannot be fully offset by 1981.

The values of the fuel economy standards reflect NHTSA's judgment of the maximum levels of average fuel economy that the major domestic manufacturers can achieve without having to undertake measures involving substantial market risks. The benefits to the nation of the domestic manufacturers meeting the 18 mpg standard as opposed to a standard of 17.2 mpg are approximately 710 million gallons of gasoline saved over the lifetime (128,000 miles) of 1981 model year trucks. The Agency considered that potential energy savings to be significant; however, the risks associated with achieving an 18 mpg standard were evaluated against the benefits to the national of compliance with the higher standards. It was decided that the market risks associated with meeting the higher 4x2 standard outweighed the potential energy savings.

C. *Current Rulemaking Activities.*—Current fuel economy rulemaking efforts are centered around the development of fuel economy standards for light trucks for the model years 1982 through 1985. The promulgation of a final rule for light trucks for model year 1982 is planned for March of 1980. Fuel economy values of 17.4 for 4x2's and 15.6 mpg for 4x4's are proposed for model year 1982, whereas a range of values are proposed for model years 1983–85. The proposed mpg levels are estimated to save between 11 and 17 billion gallons of gasoline over the lifetime of the model years 1982–85 fleets compared to their consumption if the fleet fuel economy remained at the level of the model year 1981 standards. This amounts to between 900 and 1,390 gallons per vehicle or a net dollar savings between $510 and $1,120 (1979 dollars) over the life of the vehicle.

The current focus of the Department's rulemaking on these vehicles is important to the petroleum conservation effort in the United States since light trucks consume approximately 7 percent of petroleum consumed (20 percent of motor vehicle consumption). One of the major questions which is currently beign addressed is that of consumer acceptance of changes in design and performance of light trucks. Results of preliminary research indicates consumer preferences are tending toward fuel efficient vehicles and attributes.

Between now and 1985, the manufacturers plan to introduce a number of new truck models. During this same period other factors such as inflation and gasoline availability will also tend to alter consumer buying patterns. To contribute to increased fuel economy, consumers must purchase the new fuel-efficient truck models. One way to estimate market acceptability prior to introduction is to conduct market research. The NHTSA has sponsored market research studies, and the manufacturers have provided marketing data in their responses to a July 26, 1979 request from NHTSA for information. Some estimates can be made of which vehicle attributes are important to different classes of consumers through the use of market research techniques.

Considering first the pickup/leisure users, current research indicates that there are two primary motivations to buy a pickup, the overall "utility," and the ability to use the truck for occasional light hauling. Survey respondents who use pickups for commercial purposes appear to have three main attributes in mind: capacity, versatility, and durability. Owners of vans used primarily for pleasure are motivated by the concept of a movable environment. Interior space appears to be a critical vehicle attribute to the leisure oriented van owner. Trailer pulling and light hauling are important secondary attributes. Versatility and durability are also important to van owners but of lesser importance than to pickup owners.

Another important attribute in truck selection is payload (the difference between its curb weight and its GVWR). Results of preliminary research seems to indicate that if payload were the

attribute most important to the consumer, there are numerous vehicle design concepts which could satisfy this need. Cargo volume and the type of engine installed in the light truck are also important attributes for the consumer. The results of some studies indicate that four and six cylinder engines may be gaining in acceptability. Potential truck purchasers seem to have altered their engine size preferences in favor of smaller, more fuel-efficient engines; therefore, consumers seem willing to trade off certain quick acceleration attibutes for more fuel-efficient vehicles.

Another question currently being addressed in light truck rulemaking is that of the manufacturers' financial abilities to maintain high levels of capital spending during the early 1980's. Unexpected sales declines and mix shifts toward more fuel-efficient vehicles, coupled with record spending levels, have led to third quarter 1979 North American automotive operating losses of GM, Ford, and Chrysler. Passenger car and light truck sales are expected to continue to be down during CY 1980 due to the impact of the current economic downturn and rising gasoline prices. A protracted sales decline (or shift toward supply-constrained small vehicles) might threaten manufacturers' abilities to finance investments by requiring even higher levels of borrowing than the already high levels being anticipated by the industry. If such a situation appeared imminent, the provisions of the Act would allow a revision of the standards to reflect the change in economic practicability.

Attention has also been directed toward the emission/fuel economy question during current rulemaking activities. Stricter emission standards and testing procedures have been proposed by EPA for Model Year 1983, but no final rules have been issued. NHTSA currently has estimates of the effects of these standard and procedure changes on fuel economy, and is awaiting data and commnts from interested parties. Any comments received will be considered before the Agency sets light truck standards for model years 1983–1985.

In summary, there are important questions beign addressed in current light truck rulemaking activities, dealing with consumer acceptability, manufacturers' financial capabilities, and emissions. Preliminary research has yielded encouraging results with respect to the fuel-saving potential of future light truck rulemaking reflecting continued consumer acceptance of light truck redesign for fuel efficiency.

Finally, it appears that all manufacturers have met the model year 1979 average fuel economy standards for light trucks, and also project meeting the model year 1980 standards. With the introduction of new fuel-efficient designs and technologies into new model light trucks, the emphasis of the manufacturers on fuel economy is clear.

IV. Other Automotive Fuel Economy Related Activities

A. Low Volume Automobile Manufacturers

The Act provides an automobile manufacturer producing less than 10,000 vehicles per year an opportunity to obtain an exemption from established fuel economy standards, providing that an alternative fuel economy standard is established at the maximum feasible average fuel economy level. By this provision, all manufacturers, even the very small ones, are required to improve fuel economy.

Based on experience administering this provision, the Department of Transportation recommended in the Third Annual Report to the Congress that low volume automobile manufacturers be exempted from the fuel economy standards and reporting provisions of the act, although they would still be subject to the labeling requirements of the statute. In addition, these manufacturers will still be held liable for fuel economy improvements through the gas guzzler tax initiated by the Energy Tax Act of 1978, administered by the Treasury Department. The Energy Tax Act of 1978 imposes on the sale by a manufacturer of an automobile a tax determined in accordance with tables provided under the Act (discussed in Section F). The tax is applicable to model types of 1980 and later model year automobiles which have a certain fuel economy level. The Act also provides that a small manufacturer may apply to the Secretary of the Treasury for an alternate rate schedule by showing that it is not feasible for that manufacturer to meet the tax-free fuel economy level.

In the past year, changes were also made in the procedure for administering low volume automobile manufacturers' petitions. The major change was to eliminate the requirement for public comment on the receipt of a request for exemption. The change reduced the administrative burden and maintained appropriate opportunity for public review and comment.

B. Legislative Recommendations

The National Highway Traffic Safety Administration (NHTSA) conducted an analysis of the need for the changes in the fuel economy program for the January 1979 Report to the Congress, as required by Section 502(a)(2) of the Cost Savings Act. As part of this analysis, NHTSA sought the views of the manufacturers and the public on possible program improvements. One of the prime concerns in developing legislative recommendations was to minimize the burdens on the vehicle manufacturers while still securing substantial improvements in automobile fuel economy.

In that Report on Automotive Fuel Economy, three amendments to the Act were recommended. These amendments, together with an additional fourth amendment, are now incorporated into a Departmental draft bill transmitted to the Congress last December. The first amendment would amend Section 502(c) of the Act to exempt passenger car and light truck manufacturers producing fewer than 10,000 vehicles per year from both the fuel economy standards and the Act's semi-annual reporting requirements. The production volume of these manufacturers is so low that there is minimal gasoline saved through such regulation and their economic and technical capabilities to make necessary fuel economy improvements are severely limited. An exemption for these manufacturers would therefore have no significant effect on fuel economy and would save both the manufacturers and the government a lot of unnecessary work.

The second amendment would allow a manufacturer to average U.S. assembled automobiles with its imports if U.S. production began after the Act was passed. This amendment would be consistent with domestic employment opportunities by encouraging foreign manufacturers to build new cars in this country, as Volkswagen has recently done, and use a high percentage of parts, labor, and materials originating in the United States.

The third amendment would modify the automotive fuel economy system of credits and penalties to allow the credits a manufacturer may earn to be carried forward or backward for three years instead of the current one year. This amendment is designed to facilitate compliance to meet the required levels during a given year due to unforseen circumstances. It is not intended either that manufacturers, other than those that are financially troubled, would be able to use the extended credit period routinely or that any manufacturer would be able to exploit it in order to deliberately delay fuel economy improvements in later years.

The fourth amendment would exempt a manufacturer from a finding of unlawful conduct for its failure to comply with a fuel economy standard if it has earned sufficient credits in the three years prior to the year of the penalty to completely offset such penalty. The section would also provide relief from a finding of unlawful conduct to a manufacturer that has not earned sufficient credits before the year of penalty, on the condition that the manufacturer submits a plan showing that it will earn sufficient credits during the following three years to offset the penalties. If the manufacturer, despite its plan, has a net penalty at the end of the three-year carry-back period, it would be considered to have acted unlawfully. The amendment would thus continue the statute's emphasis on compliance.

C. Evaluation of Federal Fuel Economy Standards

The National Highway Traffic Safety Administration has initiated a comprehensive program to evaluate the effectiveness of the automobile fuel economy standards. The program involves the collection and analysis of (1) "on-the-road", (or consumer experienced) fuel economy data, and (2) consumer costs of the standards. The analysis will include:

(1) Estimates of total fuel savings for both individual model years and the aggregate for all vehicles produced under the standards,

(2) a comparison of the total benefits in fuel conserved with the total consumer costs of implementing the standards.

(3) an analysis of how a vehicle's fuel economy changes over time and,

(4) comparison of on-the-road fuel economy with the fuel economy measured by the EPA procedure.

The evaluation program began in the Summer of 1979 with a pretest which demonstrated the feasibility of collecting reliable data using a log, or diary technique. The full-scale survey is scheduled to commence in early 1980 and will involve a national probability sample of approximately 40,000 vehicles, covering model year 1977, 1978, and 1979 passenger cars and model year 1978 and 1979 light trucks. In addition to broad geographical coverage, the sample will be allocated to account for seasonal effects on fuel economy, and will cover most make-model combinations for both domestic and import vehicles. Survey results are scheduled to be available on a quarterly basis, with initial tabulations in August 1980. This will be the first nationally representative, statistically reliable survey of the differences between actual, in-use fuel economy and the counterpart EPA values.

The Department of Energy conducted a study [1] of the divergence between EPA and on-the-road fuel economy using primarily 1974–1978 commercial fleet data. These data, while the only source available, may not be representative of on-the-road consumer experience. The Department of Transportation survey will provide valid data to permit comparisions of a CAFE-basis as well as a more detailed make-model level for most vehicle classifications.

D. Compliance Activities

The law requires new car dealers to display the *Gas Mileage Guides* prominently in their showrooms and to keep adequate stock on hand to meet the public demand. During 1979, twenty-one new car dealers have been fined for violating the Section of Federal law requiring them to display and stock *Gas Mileage Guides*. Civil penalties of $500 were assessed against each dealer by the National Highway Traffic Safety Administration. NHTSA plans to intensify this enforcement effort in 1980.

The agency is soliciting, with favorable results, assistance of vehicle manufacturers in developing an educational program for their franchised dealers. The program will promote better understanding by dealers of their obligations to properly display and make available *Gas Mileage Guides*.

E. Federal Acquisition Program

Section 510 of Title V requires that all passenger automobiles acquired by all executive agencies achieve a fleet average fuel economy of at least the average fuel economy standard applicable to automobile manufacturers. This section defines acquisitions as those vehicles purchased or leased for a period of 60 continuous days or more. In July 1977, these requirements were extended to include light trucks, effective 1978. As mandated by Executive Order, the fleet average fuel economy for all passenger automobiles federally acquired must exceed the statutory fuel economy standard by 2 mpg in FY 1978, 3 mpg in FY 1979, and 4 mpg in FY's 1980–85. The Executive Order further requires that no automobile may be acquired if the mpg rating is below the standard for that particular year.

During Fiscal Year 1978, agencies acquired 15,294 vehicles, attaining a fleet average fuel economy of 21.0 miles per gallon (mpg), three mpg higher than the applicable standard for that year. This will result in a gasoline savings of 16.28 million gallons over the assumed useful life of 60,000 miles for vehicles in the GSA fleet.

Through September 30, 1979, agencies have acquired 17,072 passenger vehicles which have attained a fleet average fuel economy of 22.4 MPG. This will result in a total savings of 20.87 million gallons of gasoline over the expected life. During FY 1979, agencies also acquired 595 4x4 light trucks with an average fuel economy of 17.9 mpg, and 3,022 4x2 light trucks with an average fuel economy of 19.6 mpg.

Additional savings are expected in Fiscal Year 1980 as the fleet average fuel economy objective for the Federal fleet increases to 24 MPG, the fuel economy standard rises to 20 MPG, and the program is extended to include light trucks up to 8,500 pounds Gross Vehicle Weight Rating (GVWR).

F. The Gas Guzzler Tax

The gas guzzler tax is an excise tax levied on new passenger automobiles which do not meet specific fuel economy standards. The tax becomes effective commencing with 1980 model years cars. In any one year, the amount of the tax increases as the fuel economy level of the automobile decreases. The magnitude of the tax on each fuel economy level [1] also increases each year. For example, the gas guzzler tax schedules for 1980 and 1986 are as follows:

If in MY 1980 the fuel economy level of the model type in which the automobile falls is:

	The tax is
At least:	
15	0
14 but less than 15	$200
13 but less than 14	300
Less than 13	550

The tax schedule for 1986 or later model year automobiles is as follows:

If the fuel economy of the model type in which the automobile falls is:

	The tax is
At least:	
22.5	0
21.5 but less than 22.5	$500
20.5 but less than 21.5	650
19.5 but less than 20.5	850
18.5 but less than 19.5	1,050
17.5 but less than 18.5	1,300
16.5 but less than 17.5	1,500
15.5 but less than 16.5	1,850
14.5 but less than 15.5	2,250
13.5 but less than 14.5	2,700
12.5 but less than 13.5	3,200
Less than 12.5	3,500

[1] "Comparison of EPA and In-Use Fuel Economy of 1974–1978 Automobiles," U.S. Department of Energy, October 1979.

[1] These fuel economy levels are based on a combination of city and highway mileage ratings and should not be confused with EPA city mileage ratings appearing on new vehicle window stickers.

G. Voluntary Truck and Bus Fuel Economy Improvement Program

In 1975, the Department of Transportation, the Department of Energy (then the Federal Energy Administration), and the Environmental Protection Agency initiated a joint Industry/Government Voluntary Truck and Bus Fuel Economy Improvement Program. The basic intent of the program is that it should be a voluntary effort effected in the marketplace, not a legislated or regulatory program. Voluntarism provides the much-needed flexibility to adopt the best approaches for each of the greatly dissimilar vehicle configurations and services performed by large trucks and buses.

Currently, the program includes two hundred and fifty organizations that have committed themselves to find solutions to the energy challenge in the commercial vehicle industry by taking actions as:

—Developing and offering more fuel-efficiency testing

—Conducting and reporting on fuel economy testing

—Providing fuel economy product information, advertising and training programs

—Purchasing fuel-efficient new vehicles and add-on or replacement components

—Developing, conducting, and/or supporting fuel saving driver training and motivation programs

—Providing forums for the exchange on fuel economy

Among the high points of the Voluntary Program's activity to date are:

—Sponsorship of a broad program initiated by the Society of Automotive Engineers for development and vertification of consensus standards for the accurate and consistent measurement of fuel economy of trucks and buses and for the evaluation of separate components.

—Information exchange for members on individual fuel-economy successes and failures. Program member reports are received regularly and the information is distributed to the members. For example, in 1979 one large carrier provided a well-documented report of fleet average mpg improvement of 34 percent (3.8 mpg to 5.1 mpg) since 1973 with a 1982 goal of 5.63 mpg or 48 percent improvement.

—The Double Nickel Challenge's "Race to the Fuel Pump," conducted in August 1978, in which 32 owner-operator truckers, driving their own rigs on a test track, proved that travelling at 55 mph saves fuel compared to higher speeds. The results indicated that fuel economy improved 10.5 percent at 55 mph when compared with operation at a higher speed of the driver's own choosing. Phase 2 of the Double Nickel Challenge, "The Race to the Loading Dock" is looking at productivity at 55 mph versus higher speeds and at the cost of arriving later for a load versus being first in line to load and unload. Phases 3 through 5 will be "The Race to the Maintenance Shop," "The Race to the Hospital" and "The Race to the Bank" looking at the savings in maintenance costs, accidents and finally, adding up the results of all the "races."

—In November of 1979, the Voluntary Program sponsored two heavy duty truck sessions at NHTSA's First International Fuel Economy Research Conference and, jointly with the Society of Automotive Engineers, sponsored a Symposium "Choices and Challenges: Medium Duty Truck Power Plants."

—During 1979, the Voluntary Program SAE/DOT fuel economy measurement test by fleets, manufacturers, and eight test vehicles (four standard trucks—two Class 8 with trailers, and two Class 6—are paired with four similar vehicles having fuel saver components) were continued. The trucks and support are contributed by industry and the tests conducted in accordance with SAE Recommended Practices developed under the Voluntary Program.

The Voluntary Program has been the prime motivator for the voluntary purchase of fuel saving components on new trucks. In the years 1973 through 1978, commercial vehicles saved 2.6 billion gallons of fuel as vehicle operators purchased fuel savings components on their vehicles at a rapidly increasing rate. Savings through 1979 are estimated at 3.6 billion gallons.

V. Utilization of Advanced Technology

In this Chapter the methods currently being used by the automotive industry in achieving fleet average fuel economy goals are surveyed, with emphasis placed on the degree to which advanced technology has played a role in this phase of the energy conservation effort. In this respect, Chapter V responds to the statutory requirement of the Department of Energy Act of 1978 (P.L. 95–238), Title III, Section 305, which directs the Secretary of Transportation to submit a report to Congress each year on the results of an evaluation of the extent to which the automotive industry utilizes advanced automotive technology. Most of the technologies evaluated are either partially implemented or are estimated to be available for implementation by the mid-1980s.

Seven general categories of technological improvement has been identified which could lead to increased fuel economy in the mid-eighties for both passenger automobiles and light trucks (Table V–1). Pictures of specific technologies shown are provided courtesy of the Ford Motor Company, General Motors Corporation and the Chrysler Corporation.

A. Conventional Spark Ignition Engines

Several technical changes by all producers can be expected to provide improvements to overall fuel efficiency of conventional spark engines. These include: better fuel control, better combustion chamber design and increased use of electronics. Most of the automotive manufacturers have been gradually expanding their use of electronic engine controls, beginning in the early 1970's with electronic ignition systems. The basic reason for this trend is that electronic control of engine variables provides for a better optimization of fuel economy and emissions.

Some microprocessor control systems have already been introduced which monitor various engine functions and vary spark timing, air-fuel ratios, exhaust gas recirculation, and idle speed. Optimized engine control is expected to yield a one percent to three percent fuel economy gain. After the introduction of microprocessor controlled systems, it can be expected that they will be further developed to increase the number of power-train functions (including transmission functions, such as shifting) monitored and controlled. Application of electronics is expected to continuously increase in both cars and light trucks.

B. Turbocharged Spark Ignition Engines

General Motors, Ford, Saab, and Porsche are now offering turbocharged engines in at least one of their lines of automobiles. Turbocharging offers the

potential for improved fuel economy by permitting the substitution of a small engine for a large one without affecting vehicle acceleration performance. In general, the turbocharged engines currently in use appear to be intended to improve performance without regard to fuel economy. Volkswagen, under current contract to DOT, has developed test data showing that a turbocharged spark ignition engine in a 3000 lb. inertia weight vehicle can achieve 33 mpg EPA composite fuel economy, while meeting MY 1981 emission standards. It is expected that turbocharged spark ignition engines will be increasingly used in the future, in both automobiles and light trucks. Figure V–1 is a diagrammatical sketch of Ford's 2.3L turbocharged engine.

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TABLE V-1

Representative Fuel Economy Improvement Techniques for Passenger Cars and Light Trucks In the Mid-Eighties

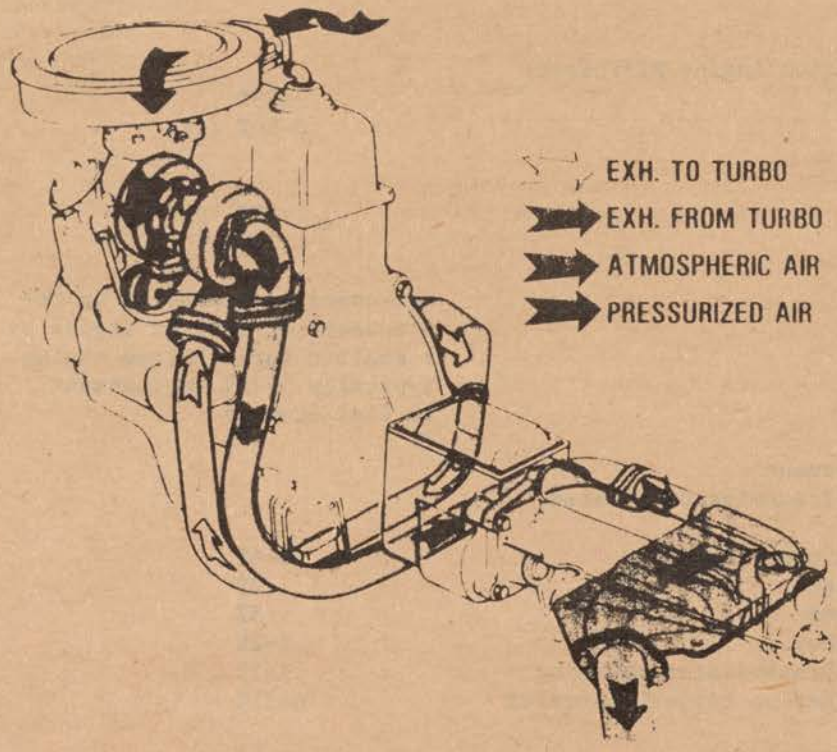
Technology	Typical Improvement in Fuel Economy from 1978 (1)	
1. Weight Reduction (downsizing, materials substitution, and/or alternate configurations for body or powertrain)	10% reduction in weight increases fuel economy by 8% at constant acceleration performance.	
2. Engine Improvement		
Improved Spark Ignition Engine Efficiency		
a. Optimized control	1-3%	
b. Engine quality	0-20% (2)	
Alternate Engines		
a. Diesel	25%	
b. PROCO	20%	
Turbocharging	car-specific depending on replacement of current engine by a smaller turbocharged engine. Typically 5-10% improvement in fuel economy	
3. Transmission Improvement		
Improved Automatic Transmission related to current 3-speed		
a. Locked-up torque converter	3-6%	
b. Wide range 3-speed	2%	
c. Wide range 4-speed	5%	
d. Improved efficiency	1-2%	
e. Improved engine/transmission matching	1-2%	
f. 4-speed with locked-up torque converter	8-11%	
Overdrive Manual Transmission	5%	
4. Improved Lubricants		
a. Crankcase		
1. lower viscosity	1%	3% total
2. friction modified	1%	
b. Rear axle lower viscosity	1%	
5. Reduced Parasitic Losses	1-4%	
6. Reduced Tire Rolling Losses	5%	
7. Improved Aerodynamics		
a. Complete Body redesign	5%	
b. Add-on devices	3%	

(1) These values are not necessarily additive
(2) As compared to an average 1978 engine.

FIGURE V-1

EXHAUST CROSSOVER/DOWNPIPE AND CONVERTER SYSTEM

FORD 2.3L TURBOCHARGED ENGINE



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C. *Diesel Engines*

Diesel engines are increasingly being used in automobiles and light trucks sold in the U.S. Currently, General Motors, Mercedes-Benz, Peugeot, and Volkswagen offer diesel-powered automobiles. Similarly, General Motors and Volkswagen offer light trucks powered by diesel engines. In May 1979, General Motors had built over 77,000 cars with diesel engines, or about twice the number built in the 1978 model year. New diesel car sales in the U.S., as a percent of total U.S. car sales, is reported to have more than doubled between October 1978 and October 1979, increasing from 1.0 percent to 2.8 percent.[1] Other manufacturers of cars and light trucks are actively working on diesel engines, and it appears that the market for these engines will increase in the future.

Although the diesel engine has the advantage of achieving higher fuel economy than the gasoline engine, it also has problems with emissions, mainly with regard to NO_x and particulates. A major concern is the potential health problem associated with the possible carcinogenicity of the relatively large quantities of particulate matter exhausted by the diesel engine. An evaluation of research and public issues associated with the prospective widespresad use of diesel-powered light duty vehicles is being sponsord by EPA, DOE and DOT. The evaluation is being performed by the National Academy of Science, and involves all the biomedical, environmental, technical, energy and economic aspects relevant to the potential problem. It is scheduled for completion at the end of 1980. The Departments of Transportation and Energy together with the Environmental Protection agency are also conducting a study of the economic, energy and health implications of projected growth in the diesel-engine-equipped fleets of passenger automobiles and light trucks. This three-agency study is intended to assist policy makers in the Federal Government. The study currently is planned for completion in Spring, 1980.

d. *Stratified Charge Engines*

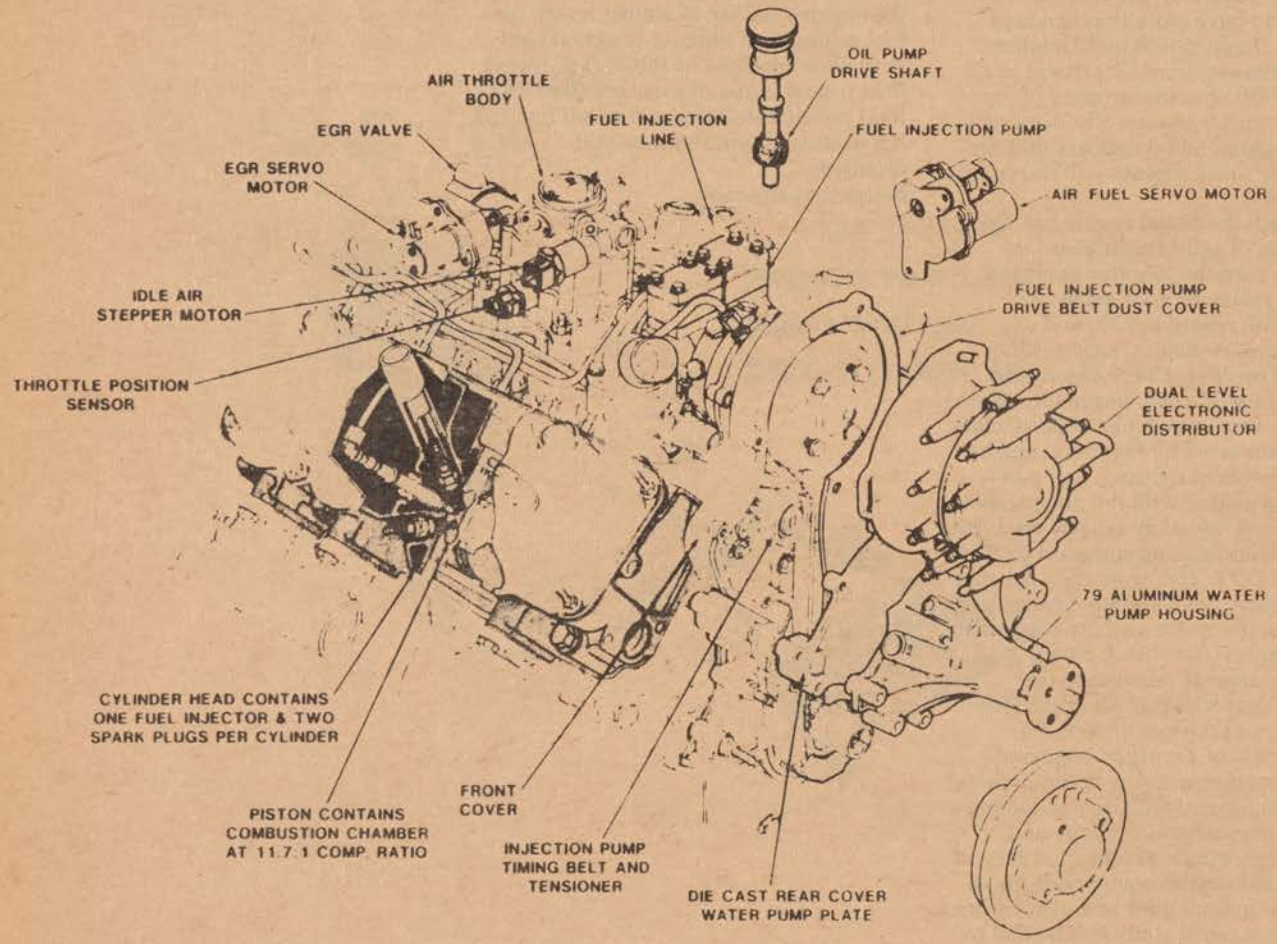
Development of a direct injected stratified charge spark ignition (or gasoline) engine with progrmmed combustion (called PROCO, Figure V–2) is continuing at Ford. A higher compression ratio and a very lean air/fuel ratio provides a 15–20 percent improvement in fuel economy over current conventional engines while maintaining acceptable emission levels. Currently in the pre-production engineering phase, Ford is field testing a fleet of about 200 automobiles equipped with this engine. Initial plans were to develop the PROCO system using Ford's 5.7 liter V–8 but consideration is not being given to a smaller engine (5.0 liter) in light of the recent market shift to small cars. Application of the PROCO engine to light trucks is also expected. Success in the introduction and commericalization of the PROCO engine would be particularly beneficial to autotmobiles and light trucks in view of the engines' ability to almost match the fuel economy of indirect injection light duty diesel engines. A PROCO-powered fleet is now under experimentation as a final test of durability and reliability, but noise and vibration are still problems.

BILLING CODE 4910-59-M

[1] *Wards's Automotive Reports*, November 19, 1979, p. 371.

FIGURE V-2

5.0 LITER PILOT PROCO ENGINE



BILLING CODE 4910-59-C

E. Energy Storage

General Motors has a development program for electric vehicles and is reported to have plans to introduce them on the market by the mid 1980's. They will be used first in vans and delivery vehicles because of greater ease in carrying batteries and routinely scheduled overnight charges.

F. Improved Transmissions

GM and Chrysler have introduced lockup torque converter clutches on some of their automatic transmissions and are expected to gradually expand their application in the early 1980's. Figure V–3 is a picture of a cutaway model of GM's THM 200 transmission with a lockup clutch.

Ford introduced a four-speed automatic transmission in certain 1980 model automobiles and it is expected that it will use this transmission in more 1981 models, including some light trucks. The overdrive fourth gear combined with a split power path provides a substantial improvement in highway fuel economy (approximately 10 percent). GM and Chrysler are expected to introduce their own four-speed automatic transmissions with lockup torque converters in the early 1980's.

G. Weight Reduction

1. *Downsizing.*—Redesign of automobiles to reduce their overall size and weight while maintaining interior room has been so far the major means of weight reduction employed by automobile manufacturers. Extensive downsizing began in MY 1977 with the GM standard size cars and has continued to date with all manufacturers having reduced the size of their standard and intermediate models. Further downsizing by all producers can be expected in the early 1980's.

BILLING CODE 4910-59-M

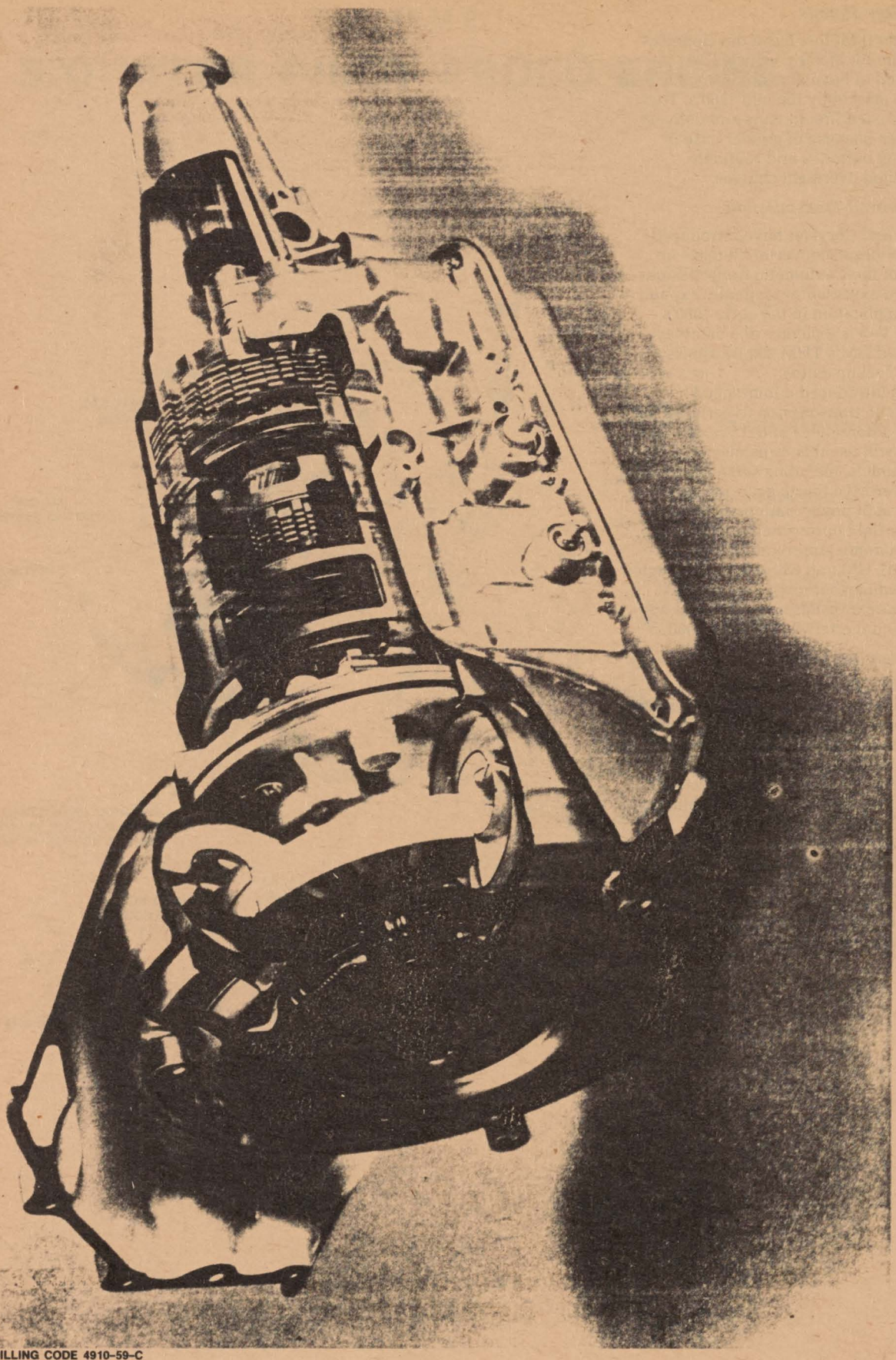


FIGURE V-3
THM 200 TRANSMISSION

BILLING CODE 4910-59-C

Because of the different functional requirements, substantial reduction in the size of standard light trucks is not expected. However, introduction of smaller, compact light truck models in addition to existing standard models is likely. These smaller models should give the option of better fuel economy to truck buyers who are giving more emphasis to that attribute.

2. *Front Wheel Drive.*—Closely associated with future downsizing will be the introduction of front wheel drive. Front wheel drive design for a given interior volume is significantly lighter than its rear wheel drive counterpart because it facilitates an overall more efficient packaging.

In April 1979, GM introduced front wheel drive in its new, downsized compact cars. General Motors' new X-cars show a 30 percent improvement in fuel economy over their 1979 counterparts. Approximately one half of this is estimated to result from weight reduction, while the other half is due to technological improvements. GM has announced its intention to extend the use of front wheel drive across a major portion of its product line by the mid-1980's. Chrysler Corporation (which already uses front wheel drive in its Omni/Horizon car, Figure V–4) has also announced its intention to convert all of its passenger car models to front wheel drive by 1985. Chrysler is expected to begin this conversion in earnest in 1981 with the introduction of a new front wheel drive compact. Ford is expected to introduce some front wheel drive models in the early 1980's; a similar trend for Japan's high volume small cars is likely.

BILLING CODE 4910-59-M

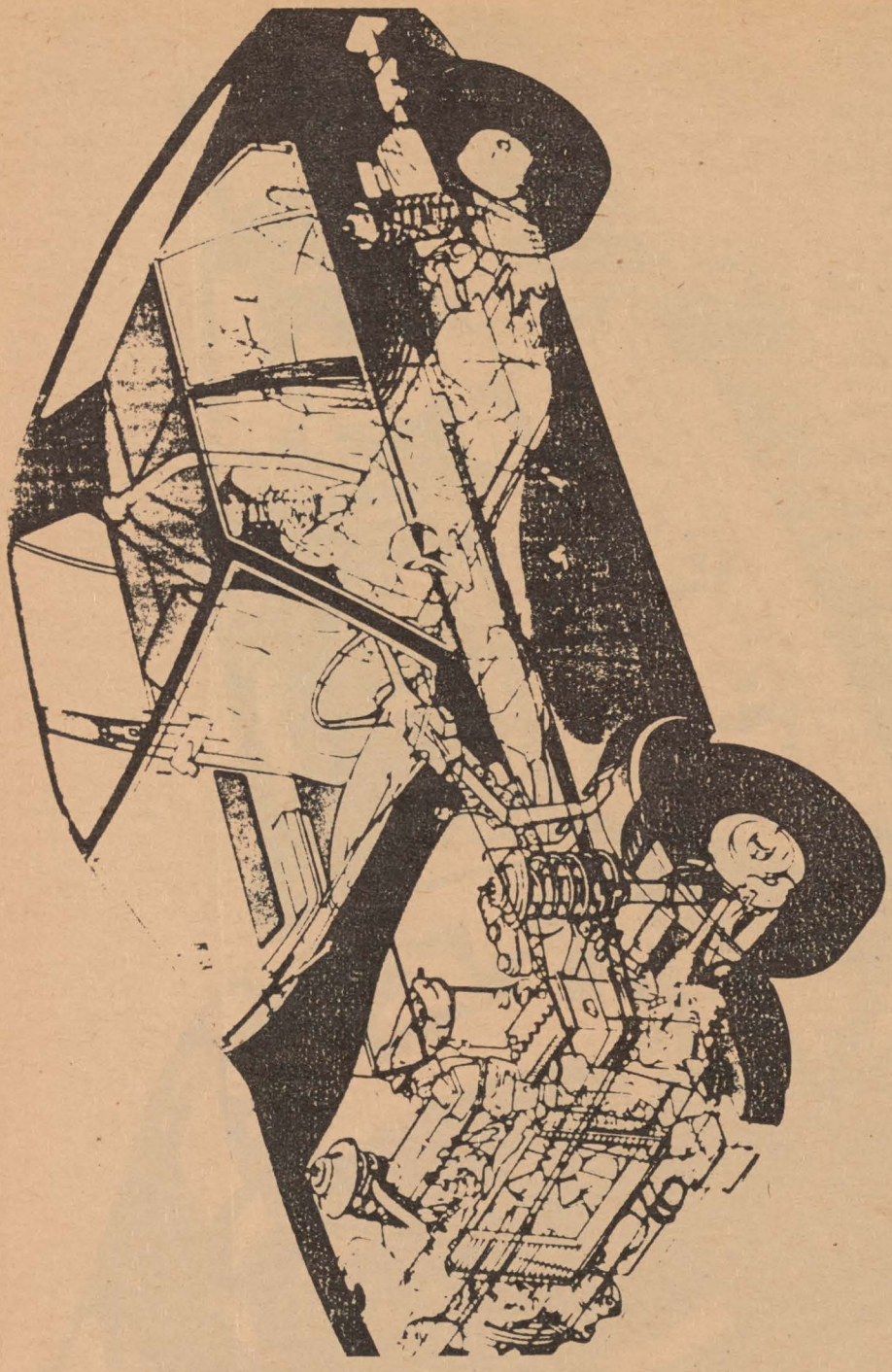


FIGURE V-4
FRONT WHEEL DRIVE OMNI

BILLING CODE 4910-59-C

3. *Material Substitution.*—Since 1975, the application of high strength low alloy steel, plastics and aluminum in place of heavier, conventional steel, cast iron and other materials, has increased substantially. For the most part, this increase has been accomplished by the more extensive use of the lighter materials in components where the success of their use had already been demonstrated. Weight reduction through materials substitution will be vigorously pursued by auto manufacturers as the implementation of further downsizing proves impractical.

H. *Computer-aided Design.*—All auto manufacturers are placing considerable emphasis on improved aerodynamics as a source of improved fuel efficiency. Advances in computer technology have made possible the application of computers in the creation and simulation of new automotive designs. These techniques will provide increased ability to design vehicles more as systems and will be capable of evaluating complex design parameters, including material substitutions. The applicability of computer-aided design has already been demonstrated through its use on one of the new 1980 compact model models on the market.

I. *Aerodynamics and Rolling Resistance.*—Aerodynamic drag will be reduced on the order of 20 percent in the early 80's as new more aerodynamically efficient body designs are introduced and/or aerodynamic add-on devices are employed. It may ultimately be possible to further reduce aerodynamic drag an additional 20 to 30 percent through "ground-up" design of bodies for minimum aerodynamic drag. Each 10 percent reduction in drag should result in an approximate 2–3 percent improvement in fuel economy. By the early eighties, rolling resistance will be reduced by 35 percent compared to today's average radial tire largely through the use of increased inflation pressures and construction materials exhibiting lower hysteretic losses (losses due to delays in the effects of changing forces). Even further reductions may be possible with still higher inflation pressures as improvements in suspension compliance permit. Each 10 percent reduction in rolling resistance should result in an approximate 1 to 2 percent improvement in fuel economy.

VI. Future Technology and Research and Development Activities

A. Overview of NHTSA Activities

As part of its program to promote research and development of fuel-efficient vehicles, NHTSA sponsored two conferences to exchange and disseminate information on automotive fuel economy research. One was the Agency's second Contractor's Coordination Meeting held December 11–13, 1978. The purpose of this conference was to present information on the content and results of contract research sponsored by NHTSA to support automotive fuel economy regulations. Six technical sessions were held:

- Fuel Economy and Emissions Considerations
- Motor Vehicle Demand Forecasting
- Consumer Research
- Engines
- Weight Reduction
- Industrial Behavior

NHTSA also sponsored the First International Automotive Fuel Economy conference held from October 31–November 2, 1979. This conference provided the opportunity for an international exchange of ideas between scholars and practitioners concerning matters of technology, economics and public policy relating to fuel economy. At the opening sessions, representatives from the leading automotive producing countries presented Government Status Reports on "Energy Use and Conservation Programs in the Automotive Transportation Sector."

Representatives from Japan, Italy, the United Kingdom, Canada, Sweden, France, Germany and the United States made presentations on their existing fuel economy programs, results thus far achieved, and future plans. Nine technical sessions were held and 51 papers were delivered. The major subject areas covered in the conference included:

- Future Powertrain Concepts
- A Systems Approach to Improved Fuel Economy
- Diesel Engine Technology
- Current Spark Ignition Engines
- Vehicle Design Materials
- Heavy Duty Trucks
- The Market and the Consumer
- Improved Transmission and Hybrid Vehicle concepts

All participating countries were supportive of the conference objectives of sharing ideas and progress on changing technologies and economic impacts concerning fuel economy. The conference encouraged efforts toward an international undertaking for energy conservation directed toward motor vehicles. There was unanimous agreement by representatives from all the countries that similar information exchanges in the future would be beneficial to all. The next conference will be hosted by another country in the fall of 1981 with subsequent conferences to occur every two years.

In addition, in February 1979, a conference on Basic Research directions for Advanced Automotive Technology was held in Boston, Massachusetts. The conference was funded by NHTSA and organized in cooperation with the Department's Transportation Systems Center. Its purpose was to obtain the views and advice of knowledgeable and interested scientists and engineers from various fields and institutions throughout the United States and the world. An examination of material presented suggested basic research needs in eight specific topics of engineering sciences. These topics are listed in Section C below. New technical knowledge in these topic areas has been lacking and hence impeding progress toward the evaluation of new automotive technology. The President agreed with the conclusions of this conference and proposed an allocation of $800 million for implementation of an industry/government cooperative program of basic research. The costs of the research are to be shared by both industry and government, each undertaking specific research projects and individually bearing their respective costs. Negotiations are currently in progress concerning the details of sharing arrangements.

In 1979, the NHTSA continued to expand its research capability to support its automotive fuel economy regulatory responsibilities. the Department of Transportation's Transportation Systems Center in Cambridge, undertook the bulk of the effort, under the general management of the NHTSA, through both in-house and contract research. Research continued in five general project areas:

- *Assessment of Automotive Technology*
- *Effects of Other Federal Standards on Fuel Economy*
- *Industrial Analysis*
- *Economic Analysis and Impact Evaluation*
- *Market Analysis and Impact Evaluation*

The primary activities were research and analysis in support of the revision of the 1981 light truck standards, assessment of manufacturers' capabilities to increase fuel economy for model years subsequent to 1985, and cost and manufacturability analysis in support of other motor vehicle standards and their effect on fuel economy.

In the technology area, research efforts have yielded several promosing avenues leading toward improved fuel economy. The most outstanding finding is that a turbocharged spark ignition four cylinder engine can achieve 32 mpg in a 3,000 pound vehicle. This can be

accomplished without a reduction in performance and moreover meets 1981 emissions standards. Research on weight reduction continues to hold promise, principally because of the substitution of lighter weight materials for conventional case iron and carbon steel. Thus, given the inverse relationship between vehicle weight and vehicle fuel economy, fuel efficient automobiles in the 40–50 mpg range are technologically feasible by 1995. Further transmission improvements also show promise. A step beyond the four-speed lockup transmission currently being produced by Ford is the continuously variable transmission which potentially offers a further 10 percent improvement in fuel economy. Altogether, research efforts are following an evolutionary pattern whereby continuous step by step progress toward fuel economy is being achieved.

Improvements in fuel efficiency of motor vehicles occasionally involves technological change which adversely impacts on the regulatory efforts of other federal agencies. When this occurs, there is need for cooperation among the agencies involved. An example is the diesel engine. This engine dramatically increases fuel economy but at the same time increase particulate emissions. To better understand the significance and ramifications of this problem, DOT, EPA and DOE have sponsored a joint study with the National Academy of Sciences on "The Research and Policy Implications of the Substitution of Diesel Engines in Future Light Duty Vehicles."

Since a cornerstone success criterion for attainment of fuel economy objectives rests upon technological innovation by the industry, it is also important to be aware of their progress and problems. NHTSA's ongoing activities here include a comprehensive data collection system at industry, firm and plant levels concerning production processes, costs, suppliers, capital needs for retooling and related data. This is supported by vehicle teardown studies and surrogate plant construction.

These, together with ongoing information collected directly from the industry, form the basis for measurement and analysis of such factors as (1) progress toward achieving technological objectives, (2) progress of innovational activity, (3) key technological breakthroughs affecting future fuel economy, (4) the flow of production and financial planning, and (5) the incidence of technical bottlenecks which may act to inhibit achievement of fuel economy regulations.

Research efforts continued to improve knowledge about several related economic considerations relevant to the implementation of the fuel economy standards. At the industry level, research was completed on the labor, materials and capital needed by the industry to meet fuel economy standards. Studies on consumer attitudes toward fuel efficient vehicles indicate that gasoline availability and rising prices are increasingly perceived to be a fact of life and that fuel economy is now a key influence on auto purchase decision making. This is verified by continual tracking of auto sales, scrappage and vehicle use. At the regional level, NHTSA's research capabilities were expanded to include the analysis of economic impacts associated with the implementation of the CAFE standards. The purpose is to determine the income and employment effects on the auto and other closely-associated industries.

B. Incentives for the Development of Advanced Technology

Although much progress has already been made, research and development efforts relating to fuel economy will take on even greater importance in coming years. Recent events concerning the international oil supply situation give new emphasis to the need for a concerted effort for even greater strides toward more fuel efficient vehicles.

As part of an intended research and development program to improve fuel economy, the President has proposed a 10 year $200 million program to conduct research and analysis to support NHTSA's rulemaking activities in fuel economy.[1] The emphasis of the proposed research effort is on technology assessment because technological change, together with its implementation across the entire motor vehicle industry, will be the key toward a successful program of fuel economy in the future.

Progress to date has been impressive; in fact, there are now prototypes of automobiles which achieve greater than 50 mpg. Still, the widespread adoption of these vehicles might require changes in lifestyles for many people.

The President's program, which is designed to cover technologies which could be implemented in a moving timeframe 7–15 years into the future, would focus research in three primary areas: Engine and Powertrains; Structural Design Improvement, and Fuel Efficient Prototype Vehicle Development.

The study of improved engine and drivetrain components and system would focus on emissions control technology for diesel engines in automobiles and light trucks, a new family of direct injection diesels for light duty applications, an optimized gasoline spark ignition engine, advanced transmissions and controls for passenger cars and light trucks, and advanced engines for heavy trucks and buses.

The assessment of structural design improvments would study new structural concepts and the opportunity for weight reduction through redesign and materials substitution. Also, the durability and mass producibility of new structures and substitute materials would be analyzed. Finally, the third area of study would concentrate on the integration of advanced concepts into particular vehicle types such as the two-passenger urban vehicle and the commercial pickup truck.

The fulfillment of energy conservation objectives will require an investigation of all technological options. The President's program will enable a detailed analysis of every technological alternative for possible application to motor vehicles. This will also provide for a fuel economy improvement which is progressive but at the same time realistic. Clearly there is still much work to be done and many benefits to be gained by devoting more time and resources toward improved fuel efficiency of motor vehicles. Given that passenger cars and trucks consume about 82.5 percent of the energy used in transportation, these efforts are likely to yield substantial energy conservation benefits. The President's program will provide badly needed resources to strengthen this effort. It will provide the Department of Transportation with the opportunity to increase its research activities in those areas of technology which remain promising, but questionable for near-term implementation. The Department anticipates that such technololgy implementation will be encouraged through its participation and leadership in this program.

C. Development of Advanced Technology

To date, the automobile industry has concentrated its efforts and resources on applied technology to satisfy near-term federal standards for fuel economy, emission control, and safety. Relatively few incremental modifications have been made to the existing scientific knowledge base, which must be

[1] Transportation Energy Efficiency Act, 1979, Title IV, Fuel Economy Technology Assessment (Proposed Legislation).

expanded to underpin the engineering for the automobile of the 1990's and beyond.

At the federal level, there has been only limited emphasis on basic automotive research. A number of federal statutes have directed government involvement in automotive technology, related to setting emission and safety standards and energy conservation policies. Current government automotive technology programs are primarily development and demonstration efforts focused on specific technological options for engines, emission control systems, safety systems, and alternative fuels.

A proposed Department of Transportation Cooperative Automotive Research Program seeks to overcome decades of inattention to the need for replenishing the basic science and engineering foundations of automotive technology. It would develop a substantial body of basic research aimed at fundamentally improving automotive technology for the development of more fuel-efficient and socially acceptable automobiles during and beyond the 1990's.

This basic research program would expand the technological foundations for new engineering needed to improve fuel economy and produce socially acceptable automobiles beyond the mid-1980's. Incremental modifications to existing technology will enable the automobile industry to meet near-term requirements for energy conservation, but the long-term goal of decreased reliance on imported oil depends on fundamental technological advancements in automotive engineering and design.

The proposed Cooperative Automotive Research Program will involve joint industry-government funding and planning. The President included $800 million for a directed program of basic research in his proposed $16.5 billion Energy Efficiency Program for encouraging mass transit and automobile initiatives. A range of university, industry, and federal laboratories will perform the research to ensure independent sources of new ideas. Personnel exchanges among the laboratories will maintain the flow of information and the transfer of new engineering knowledge. The Secretary of Transportation will establish a new office of basic automotive research under his direct guidance to administer the Department's part of the program.

The major research areas indentified at this time include the following technical disciplines:

- Thermal and fluid sciences
- Structural mechanics
- Electrochemistry
- Aerodynamics
- Materials science and processing
- Control systems
- Friction and wear
- Acoustics and vibration

The program will provide new sources of ideas and innovation by broadening the automotive research community. It will stimulate competition by making new ideas readily available at the same time it trains additional automotive scientists and engineers.

[FR Doc. 80-9943 Filed 4-2-80; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

Privacy Act of 1974; Revised System of Records

AGENCY: Office of the Secretary, Department of the Treasury.

ACTION: Notice of intent to revise Privacy Act systems of records.

SUMMARY: Pursuant to the requirements of the Privacy Act of 1974 (5 U.S.C. 552a) the Assistant Director (Telecommunications Management) gives notice of the proposed change in the system location for Treasury/OS 00.193 (44 FR 48411, August 17, 1979), Employee Locator and Automated Directory System. The data will now be maintained on Treasury owned and operated equipment located in the Main Treasury Building. Adequate safeguards will continue to be maintained and the security will be increased since access will be limited to designated Treasury personnel.

DATES: Public comments on this system are not required since this change in location is not an expansion of the system. The amended system location will become effective April 1, 1980.

ADDRESS: Department of the Treasury, Office of Administrative Programs, Telecommunications Management, Mezzanine Floor, 1331 G Street, N.W., Washington, D.C. 20220.

FOR FURTHER INFORMATION CONTACT: Mr. Harold R. Patterson, Assistant Director (Telecommunications Management), Department of the Treasury, 1331 G Street, N.W., Mezzanine Floor, Washington, D.C., 20220, 202-376-0413.

Dated: March 24, 1980.

W. J. McDonald,

Assistant Secretary (Administration).

Treasury/OS 00.193

SYSTEM NAME:

Employee Locator and Automated Directory System.

SYSTEM LOCATION:

(1) Employee Locator: Main Treasury Building, 15th and Pennsylvania Avenue, N.W., Washington, D.C. 20220. (2) Automated Directory System: Main Computer—Main Treasury Building, 15th and Pennsylvania Avenue, N.W., Washington, D.C. 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Department of the Treasury employees located in the Washington, D.C., Metropolitan Area.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Employee Locator—name of individual, office address, office telephone extension, home address, home telephone, emergency notification data. (2) Automated Directory System—name of individual, office address, office telephone extension.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Used at the Treasury Switchboard Information Positions to assist callers in locating Treasury employees and to notify a designated emergency contact in the event of an emergency involving the employee. (2) Used to compile Departmental and Bureau Telephone Directories. For additional routine uses see Appendix AA. Users: Subscribers to Treasury Telephone System and Telephone Information Operators.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

(1) Employee Locator—Card form TD F 73-50.1. (2) Automated Directory System—Diskette.

RETRIEVABILITY:

Indexed by name and/or block code numbers.

SAFEGUARDS:

(1) Employee Locator—24-hour switchboard operation with controlled access. (2) Automated Directory System—computer access codes.

RETENTION AND DISPOSAL:

Maintained until notice of change or employment is terminated. The card form is destroyed by burning and the information on the diskette tape is erased.

SYSTEMS MANAGER(S) AND ADDRESS:

Assistant Director (Telecommunications Management), Office of Administrative Programs, Office of the Secretary, Washington, D.C. 20220.

NOTIFICATION PROCEDURE:

Assistant Director (Telecommunications Management), Office of Administrative Programs, see above.

RECORD ACCESS PROCEDURES:

Assistant Director (Telecommunications Management), Office of Administrative Programs, see above.

CONTESTING RECORD PROCEDURES:

Assistant Director (Telecommunications Management), Office of Administrative Programs, see above.

RECORD SOURCE CATEGORIES:

Information is provided by individual employees, who are given the option of non-release of the home address, telephone and emergency information.

[FR Doc. 80-10072 Filed 4-2-80; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 45, No. 66
Thursday, April 3, 1980

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL 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 2:00 p.m. on Monday, March 31, 1980, the Board of Directors of the Federal Deposit Insurance Corporation unanimously determined, on motion of Chairman Irvine H. Sprague, seconded by Director William M. Isaac (Appointive), concurred in by Mr. Lewis G. Odom, Jr., 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 a resolution amending Parts 328, 330, and 331 of the Corporation's rules and regulations to reflect an increase in the amount of Federal deposit insurance coverage from $40,000 to $100,000, in implementation of the Consumer Checking Account Equity Act of 1980, which was effective March 31, 1980.

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: March 31, 1980.

Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[S-682-80 Filed 4-1-80; 2:55 pm]
BILLING CODE 6714-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION.

Notice of changes 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 closed meeting held at 2:30 p.m. on Monday, March 31, 1980, the Board of Directors of the Federal Deposit Insurance Corporation unanimously determined, on motion of Chairman Irvine H. Sprague, seconded by Director William M. Isaac (Appointive), concurred in by Mr. Lewis G. Odom, Jr., acting in the place and stead of Director John G. Heimann (Comptroller of the Currency), that Corporation business required the addition of the following matters to the agenda for consideration at the meeting, on less than seven days' notice to the public:

Application of State Bank and Trust Company, Unadilla, Georgia, an insured State nonmember bank, for consent to merge, under its charter and title, with Bank of Pinehurst, Pinehurst, Georgia, also an insured State nonmember bank, and for consent to establish the sole office of Bank of Pinehurst as a branch of State Bank and Trust Company.

Legal Division memorandum dated March 21, 1980 regarding the liquidation of assets acquired by the Corporation from Coronado National Bank, Denver, Colorado.

The Board further determined, by the same majority vote, that no earlier notice of these changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(10)).

Dated: March 31, 1980.

Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[S-683-80 Filed 4-1-80; 2:55 pm]
BILLING CODE 6714-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION.

Notice of agency meeting. Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2 p.m. on Monday, April 7, 1980, to consider the following matters:

Disposition of minutes of previous meetings.

Reports of committees and officers:

Minutes of the actions approved by the Committee on Liquidations, Loans and Purchases of Assets pursuant to authority delegated by the Board of Directors.

Reports of the Director of the Division of Bank Supervision with respect to applications or requests approved by him and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Audit Report: Initial Audit Review of the Activities of the Division of Bank Supervision, dated February 29, 1980.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, N.W., Washington, D.C.

Requests for information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: March 31, 1980.

Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[S-684-80 Filed 4-1-80; 2:55 pm]
BILLING CODE 6714-01-M

4

FEDERAL DEPOSIT INSURANCE CORPORATION.

Notice of agency meeting. Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, April 7, 1980, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors pusuant to sections 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)

of Title 5, United States Code, to consider the following matters:

Applications for Federal deposit insurance:

Monarch Bank, a proposed new bank, to be located at 30100 Town Center Drive, Laguna Niguel, California, for Federal deposit insurance.

Liberty Bank and Trust Company, a proposed new bank, to be located on West 70th Street (Louisiana Highway 511) at Interstate 20, Greenwood, Louisiana, for Federal deposit insurance.

Bank of LaPlace of St. John the Baptist Parish, Louisiana, a proposed new bank, to be located at 733 West Airline Highway, LaPlace, St. John the Baptist Parish, Louisiana, for Federal deposit insurance.

Application for consent to merge and establish branches:

American Bank and Trust Co. of Pa., Reading, Pennsylvania, an insured State nonmember bank, for consent to merge, under its charter and title, with The Schuylkill Haven Trust Company, Schuylkill Haven, Pennsylvania, and to establish the four offices of The Schuylkill Haven Trust Company as branches of the resultant bank.

Application for consent to merge, establish branches, and redesignate the main office location:

Bergen Bank of Commerce, Paramus, New Jersey, an insured State nonmember bank, for consent to merge, under its charter and with the title of Northeastern Bank, with Franklin Bank, Paterson, New Jersey, for consent to establish the six approved offices of Franklin Bank as branches of the resultant bank, and to redesignate the present main office of Franklin Bank as the main office of the resultant bank.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 44,264-L—International City Bank and Trust Company, New Orleans, Louisiana.

Case No. 44,267-L—American Bank & Trust, Orangeburg, South Carolina.

Case No. 44,268-NR—United States National Bank, San Diego, California.

Case No. 44,271-NR—United States National Bank, San Diego, California.

Case No. 44,276-L—First Augusta Bank & Trust Company, Augusta, Georgia.

Case No. 44,277-NR—United States National Bank, San Diego, California.

Case No. 44,278-NR—United States National Bank, San Diego, California.

Memorandum re: Franklin National Bank, New York, New York.

Recommendations with respect to the initiation or termination of cease-and-desist proceedings, termination-of-insurance proceedings, or suspension or removal proceedings against certain insured banks or officers or directors thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii).

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Requests for information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: March 31, 1980.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-685-80 Filed 4-1-80; 2:55 pm]

BILLING CODE 6714-01-M

5

FEDERAL MARITIME COMMISSION.

TIME AND DATE: April 10, 1980—10 a.m.

PLACE: Hearing Room One—1100 L Street NW., Washington, D.C. 20573.

STATUS: Open.

MATTER TO BE CONSIDERED: Docket No. 76-63: Filing of Agreements Pursuant to Section 15 of the Shipping Act, 1916—Consideration of Proposed Final Rules.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary (202) 523-5725.

[S-681-80 Filed 4-1-80; 12:42 pm]

BILLING CODE 6730-01-M

6

[USITC SE-80-20A]

INTERNATIONAL TRADE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 45 FR 21073; March 31, 1980.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9:30 a.m., Wednesday, April 9, 1980.

CHANGES IN THE MEETING: In deliberations held Monday, March 31, 1980, the United States International Trade Commission, in conformity with 19 C.F.R. 201.37(b), voted to add the following item to its agenda for the meeting to be held on Wednesday, April 9, 1980, as follows:

3. Petitions and complaints, if necessary: (a) Hydraulic control valves (Docket No. 635).

In deliberations held Monday, March 31, 1980, Commissioners Bedell, Alberger, Moore, Stern, and Calhoun determined by unanimous consent that Commission business requires the change in subject matter by addition of the agenda item, and affirmed that no earlier announcement of the addition to the agenda was possible, and directed the issuance of this notice at the earliest practicable time.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523-0161.

[S-673-80 Filed 4-1-80; 10:15 am]

BILLING CODE 7020-02-M

7

[USITC SE-80-21]

INTERNATIONAL TRADE COMMISSION.

TIME AND DATE: 10 a.m, Tuesday, April 15, 1980.

PLACE: Room 117, 701 E Street NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints, if necessary: (a) Key blanks (Docket No. 646).
5. Clams from Canada (Inv. 731-TA-17 [Preliminary])—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523-0161.

[S-7020-02 Filed 4-1-80; 10:15 am]

BILLING CODE 7020-02-M

8

INTERSTATE COMMERCE COMMISSION.

TIME AND DATE: 9:30 a.m., Tuesday, April 8, 1980.

PLACE: Hearing Room A, Interstate Commerce Commission Building 12th and Constitution Avenue, NW., Washington, D.C. 20423.

STATUS: Open Special Conference.

MATTER TO BE DISCUSSED: Rail Rate Bureaus.

CONTACT PERSON FOR MORE INFORMATION: Douglas Baldwin, Director, Office of Communications, telephone (202) 275-7252.

April 1, 1980.

[S-680-80 Filed 4-1-80; 12:42 pm]

BILLING CODE 7035-01-M

9

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE.

MEETING: Public/Private Sector Task Force.

DATE AND TIME: Thursday, April 10, 1980, 9 a.m.–5 p.m. and Friday, April 11, 1980, 8:30 a.m.–3 p.m.

PLACE: Sheraton-Potomac Inn, Gaithersburg, Maryland.

STATUS: Open.

MATTERS TO BE DISCUSSED: Preliminary Draft of Task Force Final Report.

Alphonse F. Trezza,
Executive Director, NCLIS.
March 27, 1980.

[S-676-80 Filed 4-1-80; 10:25 am]

BILLING CODE 7527-01-M

10

PAROLE COMMISSION.

TIME AND DATE: Monday, April 8, 1980, 9 a.m.–5:30 p.m.

PLACE: University of Maryland, Center of Adult Education, Room 2114, College Park, Maryland 20742.

STATUS: Opened.

MATTERS TO BE CONSIDERED:

1. Minutes of previous meeting.
2. Reports from Chairman and Commissioners.
3. Misdemeanor YCA cases.
4. Guidelines: (a) Miscellaneous severity ratings; (b) Robbery; (c) Rescission guidelines—New Criminal conduct; and (d) Reparole guidelines.
5. (a) Voting quorums; (b) Original jurisdiction workload; and (c) Abstensions.
6. Statutory good time.
7. Form H–3.
8. Protection cases.
9. Legal report.
10. Search and seizure.
11. Courtesy hearing.
12. IDC actions at statutory interim hearings.
13. Superior program achievement/cooperation with Government/codefendant information/waiver of review hearings.
14. Codefendant disparity.
15. (a) Briefing on symposium; and (b) Briefing on sentencing institute.
16. The following consent agenda items if specifically requested to a opened for discussion at the meeting.

Policy and procedures memoranda issues since last meeting:

(a) 79–16—retroactive application of guideline changes in cases above the guidelines.

(b) 80–1—Reparole guidelines—Weapons violations.

(c) 80–2—Retardation of Parole grants for release planning.

(d) 80–3—Processing retroactive guideline cases.

(e) 80–4—Supplemental warrant applications: Nonretroactivity of new policy requiring issuance by expiration of supervision term.

(f) 80–5—Correction of procedures manual, page 19, section 111; review of hearing panel recommendation.

Consent agenda—see above.

17. Proposed policy and procedures memoranda: (a) Appealing from decisions in reopened cases; (b) Drug dosage calculations; (c) FBI Handling of fugitives; (d) Stating reasons for modifying a decision; and (e) Retardation of parole grant for disciplinary infractions.

CONTACT PERSONS FOR MORE INFORMATION: Wines Marble, Analyst (202) 724–3094, 320 First Street NW., Washington, D.C.

[S-679-80 Filed 4-1-80; 11:56 am]

BILLING CODE 4410-01-M

11

PAROLE COMMISSION.

TIME AND DATE: Monday, April 7, 1980, 1 p.m.–5:30 p.m.

PLACE: University of Maryland, Center of Adult Education, Room 2114, College Park, Maryland 20742.

STATUS: Closed pursuant to a vote to be taken at the beginning of the meeting.

MATTERS TO BE CONSIDERED:

1. Appeals to the Commission of approximately 5 cases decided by the National Commissioners pursuant to a reference under 28 CFR 2.17 and appealed pursuant to 28 CFR 2.27. These are all cases originally heard by examiner panels wherein inmates of Federal Prisons have applied for parole or are contesting revocation of parole or mandatory release.
2. An application for a Certificate of Exemption under the Labor-Management Reporting and Disclosure Act of 1959.

CONTACT PERSON FOR MORE INFORMATION: Linda Wines Marble, Analyst (202) 724–3094, 320 First Street NW., Washington, D.C.

[S-678-80 Filed 4-1-80; 11:53 am]

BILLING CODE 4410-01-M

12

RAILROAD RETIREMENT BOARD.

TIME AND DATE: 9 a.m., April 10, 1980.

PLACE: Board's meeting room on the 8th floor of its headquarters building at 844 Rush Street, Chicago, Illinois 60611.

STATUS: Part of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONTINUED: Portion open to the public.

(1) Federal employee assistance program.
(2) Delayed registrations made by Kenneth R. Chasteen.
(3) Interview by industrial psychologist.

Portion closed to the public: (A) Appeal from referee's denial of disability annuity application, Edward C. Dury.

CONTACT PERSON FOR MORE INFORMATION: R. F. Butler, Secretary of the Board, COM No. 312–751–4920 and FTS No. 387–4920.

[S-677-80 Filed 4-1-80; 4:02 pm]

BILLING CODE 7905-01-M

13

SECURITIES AND EXCHANGE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [To be published].

STATUS: Closed meeting.

PLACE: Room 825, 500 North Capitol Street, Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Tuesday, March 25, 1980.

CHANGES IN THE MEETING: Deletion/rescheduling/addition.

The following item will not be considered at a closed meeting scheduled for Wednesday, April 2, 1980, following the 10 a.m. open meeting: Opinion.

The following closed item scheduled for Thursday, April 3, 1980, at 10 a.m., has been rescheduled for Wednesday, April 2, 1980, following the 10 a.m. open meeting: Freedom of Information Act appeal.

The following additional item will be considered at a closed meeting scheduled for Thursday, April 3, 1980, at 10 a.m: Amendment of formal order of investigation.

Chairman Williams and Commissioners Loomis and Evans determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Paul Lowenstein at (202) 272–2092.

March 31, 1980.

[S-675-80 Filed 4-1-80; 10:15 am]

BILLING CODE 8010-01-M

14

TENNESSEE VALLEY AUTHORITY.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 45 FR 21073, March 31, 1980.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:15 a.m., Thursday, April 3, 1980.

PREVIOUSLY ANNOUNCED PLACE OF MEETING: Conference Room B–32, West Tower, 400 Commerce Avenue, Knoxville, Tennessee.

STATUS: Open.

ADDITIONAL MATTER: The following items are added to the previously announced agenda:

Old business:

1. Project authorization No. 3503—decommissioning of the Edgement, South Dakota, uranium mill.
2. Amendment to Contract No. 78P66–148567 with Silver King Mines, Inc., Salt Lake City, Utah, for project management services for TVA's uranium/vanadium mill site and properties in Edgemont, South Dakota.

CONTACT PERSON FOR MORE INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call 615–632–3257, Knoxville, Tennessee. Information is also available at TVA's Washington Office, 202–245–0101.

SUPPLEMENTARY INFORMATION:

TVA Board Action

The TVA Board of Directors has found, the public interest not requiring otherwise, that TVA business requires the subject matter of this meeting to be changed to include the additional items shown above and that no earlier announcement of this change was possible.

The members of the TVA board voted to approve the above findings and their approvals are recorded below.

Approved:

S. David Freeman.

Dated: March 28, 1980.

Richard M. Freeman.

Robert N. Clement.

Disapproved: (None).

[S–686–80 Filed 4–1–80; 3:19 pm]

BILLING CODE 8120–01–M

Reader Aids

Federal Register

Vol. 45, No. 66

Thursday, April 3, 1980

INFORMATION AND ASSISTANCE

Questions and requests for specific information may be directed to the following numbers. General inquiries may be made by dialing 202-523-5240.

Federal Register, Daily Issue:

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202-523-3187	Scheduling of documents for publication
523-5240	Photo copies of documents appearing in the Federal Register
523-5237	Corrections
523-5215	Public Inspection Desk
523-5227	Index and Finding Aids
523-5235	Public Briefings: "How To Use the Federal Register."

Code of Federal Regulations (CFR):

523-3419	
523-3517	
523-5227	Index and Finding Aids

Presidential Documents:

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523-5235	Public Papers of the Presidents, and Weekly Compilation of Presidential Documents

Public Laws:

523-5266	Public Law Numbers and Dates, Slip Laws, U.S.
-5282	Statutes at Large, and Index
275-3030	Slip Law Orders (GPO)

Other Publications and Services:

523-5239	TTY for the Deaf
523-5230	U.S. Government Manual
523-3408	Automation
523-4534	Special Projects
523-3517	Privacy Act Compilation

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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.

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday).

This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

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DOT/NHTSA	MSPB/OPM		DOT/NHTSA	MSPB/OPM
DOT/RSPA	LABOR		DOT/RSPA	LABOR
DOT/SLSDC	HEW/FDA		DOT/SLSDC	HEW/FDA
DOT/UMTA			DOT/UMTA	
CSA			CSA	

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

REMINDERS

The "reminders" below identify documents that appeared in issues of the **Federal Register** 15 days or more ago. Inclusion or exclusion from this list has no legal significance.

Rules Going Into Effect Today

FEDERAL RESERVE SYSTEM

17924 3–19–80 / Reserves of member banks; marginal reserve requirements

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Government National Mortgage Association—

14026 3–4–80 / List of attorneys-in-fact; update

LABOR DEPARTMENT

Employment and Training Administration—

14180 3–4–80 / Housing for agricultural workers

14185 3–4–80 / Farm Labor Contractor Registration and housing for agricultural workers; cross reference updated

Pension and Welfare Benefit Programs Office–

14029 3–4–80 / Summary plan descriptions; reporting and disclosure regulations

VETERANS ADMINISTRATION

14045 3–4–80 / Construction contracts; amendments to provisions

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 April 2, 1980

CODE OF FEDERAL REGULATIONS

(Revised as of January 1, 1980)

Quantity	Volume	Price	Amount
_____	Title 6—Economic Stabilization	$3.75	$_____
_____	Title 9—Animals and Animal Products (Parts 1 to 199)	7.00	_____
		Total Order	$_____

[A Cumulative checklist of CFR issuances for 1979 appears in the back of the first issue of the Federal Register each month in the Reader Aids section. In addition, a checklist of current CFR volumes, comprising a complete CFR set, appears each month in the LSA (List of CFR Sections Affected).]

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Thursday, April 3, 1980

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Education Division General Administrative Regulations (EDGAR)

22634 **Part III—HEW/OE:**
Education Appeal Board

22648 **Part IV—HEW/OE:**
Consolidated Grant Applications for Insular Areas

22654 **Part V—HEW/OE:**
Title I, Elementary and Secondary Education Act; Awarding of Special Grants to Local Educational Agencies

22660 **Part VI—HEW/OE:**
Grants to State Educational Agencies to Meet the Special Educational Needs of Migratory Children

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State Leadership Programs

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Gifted and Talented Children's Education

22702 **Part IX—HEW/OE:**
Community Education Program

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Women's Educational Equity Act Program

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Arts Education Program

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Metric Education Program

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Consumers' Education Program

22764 **Part XIV—HEW/OE:**
Youth Employment Program

22770 **Part XV—HEW/OE:**
Financial Assistance for Environmental Education Projects

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Adult Education State-Administered Program and Commissioner's Discretionary Programs

22803 **Part XVII—HEW/OE:**
Cooperative Education Programs

22806 **Part XVIII—HEW/OE:**
Selection Criteria for Fiscal Year 1981 Grants and Contracts

22848 **Part XIX—Interior/Fish and Wildlife Service:**
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22864 **Part XX—The President:**
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federal register

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Note: See Parts IV and XVIII of this issue for documents related to EDGAR

Part II

Department of Health, Education, and Welfare

Office of Education

Education Division General Administrative Regulations (EDGAR)

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Education Division

45 CFR Chapters I, XIV, and XV

Education Division General Administrative Regulations (EDGAR)

AGENCY: Education Division, HEW.

ACTION: Final regulations.

SUMMARY: The Education Division, HEW, issues these general regulations to apply to direct grant and State-administered programs administered by the Education Division, and these general definitions to apply to all programs of the Education Division. The statutory authority for the regulations is the General Education Provisions Act and the statutes that authorize the programs covered.

These regulations provide general rules on how to apply for grants and subgrants, how grants and subgrants are made, the general conditions that apply to grantees and subgrantees, the administrative responsibilities of grantees and subgrantees, and the compliance procedures used by the Education Division. Rules that apply only to a particular program will be included in separate regulations for that program.

EFFECTIVE DATE: These regulations are expected to take effect 45 days after they are transmitted to Congress. Regulations are usually transmitted to Congress several days before thay are published in the **Federal Register**. The effective date is changed by statute if Congress disapproves the regulations or takes certain adjournments. If you want to know the effective date of these regulations, call or write the Education Division contact person.

FOR FURTHER INFORMATION CONTACT: A. Neal Shedd, Director, Division of Regulations Management, U.S. Office of Education, 400 Maryland Avenue, S.W. (Room 2129, FOB-6), Washington, D.C. 20202. Telephone (202) 245-7091 or—for general information on Education Division programs—the appropriate Regional Office listed below:

Region I—Boston, Massachusetts, 617-223-6814.
Region II—New York, New York, 212-264-8145.
Region III—Philadelphia, Pennsylvania, 215-596-1044.
Region IV—Atlanta, Georgia, 404-221-2343.
Region V—Chicago, Illinois, 312-353-6679.
Region VI—Dallas, Texas, 214-767-3711.
Region VII—Kansas City, Missouri, 816-374-5800.
Region VIII—Denver, Colorado, 303-837-4295.
Region IX—San Francisco, California, 415-556-4570.
Region X—Seattle, Washington, 206-442-0450.

SUPPLEMENTARY INFORMATION: The Education Division General Administrative Regulations (EDGAR) were published as a notice of proposed rulemaking in the **Federal Register** on May 4, 1979 (44 FR 26308). The proposed regulations consolidated into a single document common requirements found in existing Education Division regulations. With the publication of these final regulations, overlapping provisions in individual program regulations are being eliminated, as are the general grant regulations of the Office of Education and the National Institute of Education. Revisions to the program regulations—except for certain selection criteria (see below)—are included in this document, following the text of EDGAR. EDGAR contains three parts—100a, for direct grant programs; 100b, for State-administered programs; and 100c, general definitions for all programs. Part 100e, the procedures for the Education Appeal Board, was published as interim final regulations in the **Federal Register** on May 25, 1979 (44 FR 30523). It is published in final in today's **Federal Register** and renumbered as Part 100d.

EDGAR will remain in effect under the Department of Education Organization Act. Technical changes necessary because of the new Department of Education will be made at a future date. In the meanwhile, applicants and grantees under programs now administered by the Education Division are subject to the requirements in EDGAR, except as specified below under "Applicability of EDGAR."

The Education Division received numerous comments from the public on the proposed EDGAR, especially on the major issues that were outlined in the preamble of the proposed EDGAR. A discussion of major issues and a summary of the public comments and Education Division's responses to those comments—including the changes made to the regulations—are attached as Appendix A to this document. Appendix B is a copy of 45 CFR Part 74, the HEW general regulations for the administration of grants. 45 CFR Part 74 applies to Education Division grant programs.

The original intention to include an index to EDGAR and 45 CFR Part 74 with the final regulations has been abandoned; no index will be provided. However, cross-references to relevant sections of 45 CFR Part 74 are included in the text of EDGAR at appropriate places.

Applicability of EDGAR

Part 100a of EDGAR will apply to all grants made after the effective date of EDGAR under Education Division direct grant programs, with the following exception. The pre-grant procedures in Part 100a (Subparts C and D) will not apply immediately to a direct grant program unless the program statute was amended by the Education Amendments of 1978 (Pub. L. 95-561).

The application notice for each program indicates which sections of EDGAR apply to grants for fiscal year 1980.

Note.—Most application notices for Office of Education discretionary grant programs were published in the **Federal Register** on August 23, 1979 (44 FR 49574).

If EDGAR pre-grant procedures do not apply to a program, the program will use its current pre-grant procedures to make grants from appropriations for fiscal year 1980. EDGAR will be fully applicable to these programs for grants made from appropriations for fiscal year 1981, and, in any case, no later than October 1, 1980. The Education Division is proposing to amend the selection criteria for these programs in a proposed rule document in today's **Federal Register** in the proposed rules section.

The proposed rules would make the selection criteria consistent with Edgar. When these proposed rules become final, they will apply to competition for new grants made from appropriations for fiscal year 1981.

Parts 100b and 100c of EDGAR will be fully applicable on the effective date of EDGAR.

Citation of Legal Authority

A citation of statutory or other legal authority appears in parentheses on the line following each section of these regulations.

Dated: February 13, 1980.

Peter D. Relic,

Acting Assistant Secretary for Education.

Dated: February 6, 1980.

William L. Smith,

U.S. Commissioner of Education.

Dated: February 12, 1980.

Michael Timpane,

Acting Director of the National Institute of Education.

Dated: February 11, 1980.

Lee Kimchee,

Director of the Institute of Museum Services.

Approved: March 20, 1980.

Patricia Roberts Harris,

Secretary of Health, Education, and Welfare.

Title 45 of the Code of Federal Regulations is amended as follows:

1. Subchapter A is amended by revising the title and by inserting the following introduction after that title, to read as follows:

SUBCHAPTER A—EDUCATION DIVISION GENERAL ADMINISTRATIVE REGULATIONS

Introduction to Regulations of the Education Division

I. WHAT CAN I LEARN FROM THIS INTRODUCTION?

In this introduction, you will find information that will help you answer the following questions:

- What is the Education Division?
- What kinds of Federal programs of assistance does the Education Division administer?
- What Education Division regulations apply to these programs?
- How do I use Education Division regulations?
- What steps should I take to apply for assistance under an Education Division program?

II. WHAT IS THE EDUCATION DIVISION?

- The Education Division is an agency of the U.S. Department of Health, Education, and Welfare. When the Department of Education Organization Act takes effect, all of the functions of the Education Division will be transferred to the new Department of Education.
- The Education Division includes four parts:

—The Office of the Assistant Secretary for Education (including the National Center for Education Statistics);

—The United States Office of Education;

—The Institute of Museum Services; and

—The National Institute of Education.

- Each of these Offices and Institutes administers Federal programs of assistance.

III. WHAT KINDS OF FEDERAL PROGRAMS OF ASSISTANCE DOES THE EDUCATION DIVISION ADMINISTER?

- The Education Division provides assistance under two kinds of programs:

—Student financial assistance programs; and

—Grant programs.

- Student financial assistance programs include guaranteed loans, fellowships, and grants for individual students.
- Grant programs are generally divided into two kinds:

—Direct grant programs; and

—State-administered programs.

- Under a direct grant program the Education Division makes grants directly to eligible agencies, organizations, and institutions, and—under a few programs—individuals. Subgrants are not authorized.
- Under a State-administered program each State is entitled to receive funds and, depending on the requirements of the program statute, either uses the funds itself or makes subgrants to eligible agencies, organizations, and institutions.

IV. WHAT FEDERAL REGULATIONS APPLY TO THESE PROGRAMS?

- The Education Division publishes its regulations in the **Federal Register**, and codifies the regulations in Title 45 of the Code of Federal Regulations (45 CFR). There are usually regulations for each Federal program of assistance. For example, regulations for the Guaranteed Student Loan Program of the Office of Education are located in 45 CFR Part 177.
- In addition to these program regulations, there are general regulations that apply to certain categories of programs:

—Certain student financial assistance programs are subject to general regulations in 45 CFR Part 168.

—Grant programs are subject to the Education Division General Administrative Regulations (EDGAR) in 45 CFR Parts 100a and 100b. Part 100a applies to direct grant programs. Part 100b applies to State-administered programs.

—All programs are subject to the general definitions in 45 CFR Part 100c of EDGAR.

—The procedures for the Education Appeal Board are in 45 CFR Part 100d.

V. HOW DO I USE EDUCATION DIVISION REGULATIONS?

- Each set of regulations has a table of contents in the front of the regulations. The table of contents lists all of the headings used in the regulations.
- To have a complete set of requirements that apply to a program, you need a copy of—

—The program statute;

—The program regulations;

—EDGAR and 45 CFR Part 74 (for a grant program);

—The application notice that the Education Division publishes in the **Federal Register** each year (for a direct grant program under which an applicant must submit its application by a deadline);

—45 CFR Part 168 (for a student financial assistance program).

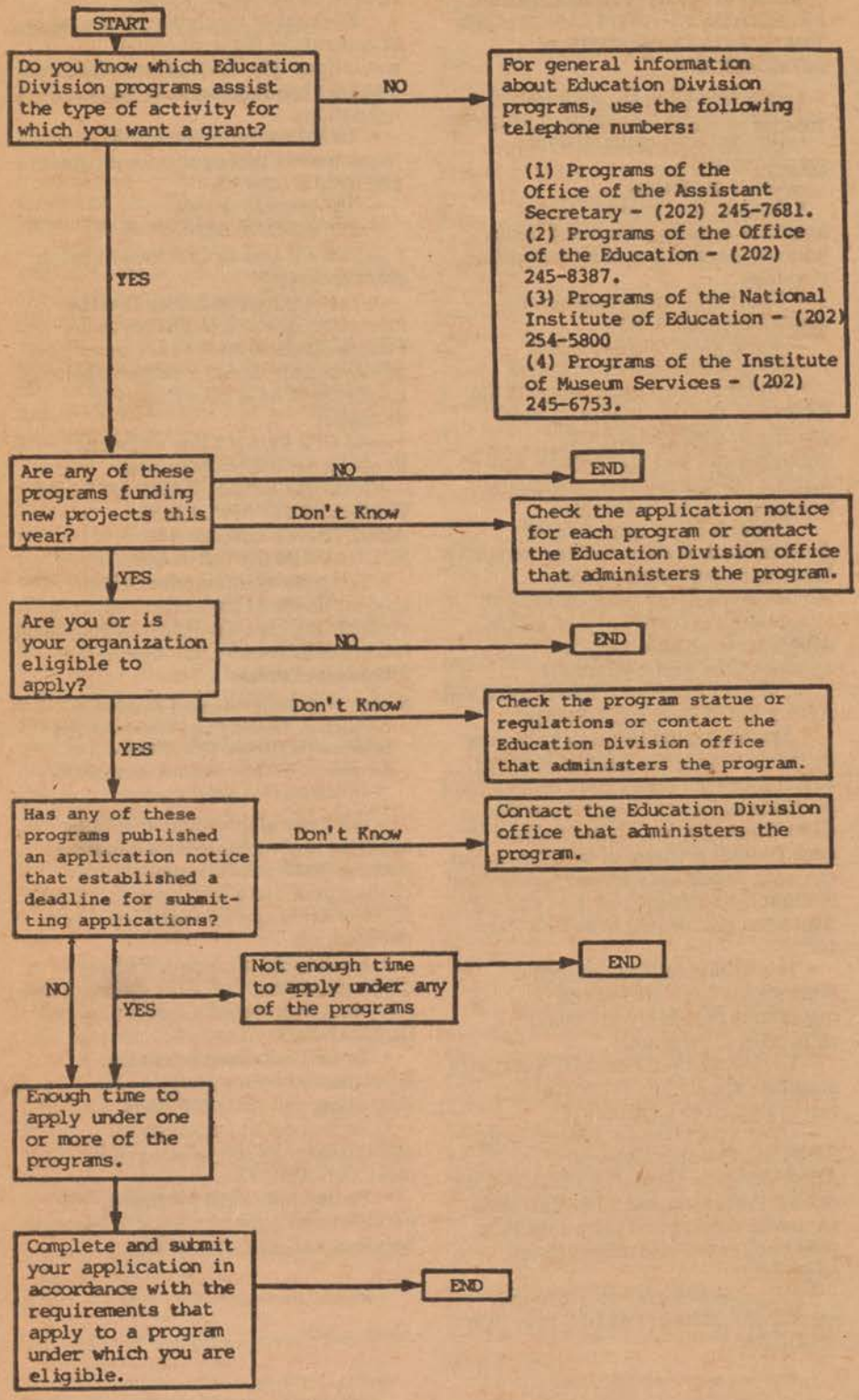
VI. WHAT STEPS SHOULD I TAKE IF I WANT TO APPLY FOR ASSISTANCE UNDER AN EDUCATION DIVISION PROGRAM?

- For general information about student financial assistance, talk to a student financial aid officer at your local college or university, or write to the following address:

Bureau of Student Financial Assistance, Division of Training and Dissemination Information Center, U.S. Office of Education, 400 Maryland Avenue, S.W., Washington, D.C. 20202

- For general information about applying to your State for a subgrant under a State-administered program, contact your State educational agency or other State agency that administers the program.
- For general information about a direct grant program of the Office of the Assistant Secretary for Education, call (202) 245–7681.
- To find out about programs administered by the National Institute of Education, call (202) 254–5800.
- To find out about programs administered by the Office of Education, call (202) 245–8387.
- To find out about programs administered by the Institute of Museum Services, call (202) 245–6753.

To apply under a direct grant program, consider using the steps suggested in the following chart:



PART 100—[REVOKED]

2. Part 100 is revoked.

3. Parts 100a, 100b, and 100c are revised to read as follows:

PART 100a—DIRECT GRANT PROGRAMS

Subpart A—General

Regulations That Apply to Direct Grant Programs

Sec.

100a.1 Programs to which Part 100a applies.
100a.2 Exceptions in program regulations to Part 100a.
100a.3 HEW general grant regulations apply to these programs.
100a.4 Education Division contracts.

Eligibility for a Grant

100a.50 How to find out whether you are eligible.
100a.51 How to prove nonprofit status.

Subpart B—[Reserved]

Subpart C—How To Apply for a Grant

The Application Notice

100a.100 Publication of an application notice; content of the notice.
100a.101 Information in the application notice that helps an applicant apply.
100a.102 Deadline date for applications.
100a.103 Deadline date for preapplications.
100a.104 Applicants must meet procedural rules.

Application Contents

100a.107 Applications for new grants under a discretionary grant program.
100a.108 Applications for new grants under a formula grant program.
100a.109 Changes to application; number of copies.
100a.110 Assure compliance with appropriate requirements of law.
100a.111 Describe the project.
100a.112 Include a proposed project period and a timeline.
100a.113 Describe the key personnel.
100a.114 Describe the resources.
100a.115 Describe the evaluation plan.
100a.116 Demonstrate capability; include evaluation of completed project.
100a.117 Information needed for a multi-year project.
100a.118 Application for a continuation award.
100a.119 Information needed if private school students participate.

Joint Funding Simplification Procedures

100a.124 Applications and preapplications under the Joint Funding Simplification Act.

Separate Applications—Alternative Programs

100a.125 Submit a separate application to each program; exception under the Joint Funding Simplification Act.
100a.126 Application must list all programs to which it is submitted.

Group Applications

100a.127 Eligible parties may apply as a group.
100a.128 Who acts as applicant; the group agreement.
100a.129 Legal responsibilities of each member of the group.

Preapplications

100a.130 Preapplications; purpose of §§ 100a.131–100a.134.
100a.131 Consideration of a preapplication.
100a.132 The effect of not submitting a preapplication.
100a.133 Result of a preapplication.
100a.134 The basis for the preapplication decision.

Open Meeting Certification Under Certain ESEA Programs

100a.138 Open meetings; purpose of §§ 100a.139–100a.141.
100a.139 The local educational agency shall hold an open meeting.
100a.140 Give notice of the open meeting; make information available.
100a.141 Certify that open meeting was held.

State Approval Procedures

100a.150 Review procedure if State must approve applications; purpose of §§ 100a.151–100a.153.
100a.151 When an applicant under § 100a.150 must submit its application to the State; proof of submission.
100a.152 The State reviews each application.
100a.153 Deadlines for State approval.
100a.154 Effect of State approval; failure to approve.

State Comment Procedures

100a.155 Review procedure if State may comment on applications: purpose of §§ 100a.156–100a.158.
100a.156 When an applicant under § 100a.155 must submit its application to the State; proof of submission.
100a.157 The State reviews each application.
100a.158 Deadlines for State comments.
100a.159 Effect of State comments or failure to comment.
100a.160 Procedures for State approval of or comment on preapplications.

OMB Circular A–95 Clearinghouse Procedures

100a.170 Clearinghouse procedures: purpose of §§ 100a.170–100a.173.
100a.171 Notify the appropriate clearinghouses.
100a.172 Applicant shall show compliance with A–95 procedures.
100a.173 The period for clearinghouse review; the effect of not complying with Part I of OMB Circular A–95.

Development of Curricula or Instructional Materials

100a.190 Consultation.
100a.191 Consultation costs.
100a.192 Dissemination.

Subpart D—How Grants Are Made

Selection of New Projects

100a.200 How applications for new grants are selected for funding.
100a.201 How to use the selection criteria.
100a.202 Selection criterion—plan of operation.
100a.203 Selection criterion—quality of key personnel.
100a.204 Selection criterion—budget and cost effectiveness.
100a.205 Selection criterion—evaluation plan.
100a.206 Selection criterion—adequacy of resources.

Selection Procedures

100a.215 How the Education Division selects a new project: purpose of §§ 100a.216–100a.222.
100a.216 Returning an application to the applicant.
100a.217 How the Education Division selects applications for new grants.
100a.218 Applications not selected for funding.
100a.219 Exceptions to the procedures under § 100a.217.
100a.220 Procedures the Education Division uses under § 100a.219(a).
100a.221 Procedures the Education Division uses under § 100a.219(b).
100a.222 Procedures the Education Division uses under § 100a.219(c).

Procedures To Make a Grant

100a.230 How the Education Division makes a grant; purpose of §§ 100a.231–100a.236.
100a.231 Additional information.
100a.232 The cost analysis; basis for grant amount.
100a.233 Setting the amount of the grant.
100a.234 The conditions of the grant.
100a.235 The notification of grant award.
100a.236 Effect of the grant.

Approval of Multi-Year Projects

100a.250 Project period can be up to 60 months.
100a.251 The budget period.
100a.253 Continuation of a multi-year project after the first budget period.
100a.254 Continuation of a multi-year project under the Joint Funding Simplification Act.

Miscellaneous

100a.260 Allotments and reallotments.
100a.261 Extension of a project period.

Subpart E—What Conditions Must Be Met by a Grantee?

Nondiscrimination

100a.500 Federal statutes and regulations on nondiscrimination.

Project Staff

100a.510 Use of a project director.
100a.511 Waiver of requirement for a full-time project director.
100a.515 Use of consultants.
100a.516 Compensation of consultants—employees of institutions of higher education.
100a.517 Changes in key staff members.

100a.518 Minimum wage rates.
100a.519 Dual compensation of staff.

Conflict of Interest

100a.524 Conflict of interest: purpose of § 100a.525.
100a.525 Conflict of interest: participation in a project.

Allowable Costs

100a.530 General cost principles.
100a.531 Limit on total cost of a project.
100a.532 Use of funds for religion prohibited.
100a.533 Acquisition of real property; construction.
100a.534 Training grants—automatic increases for additional dependents.

Indirect Cost Rates

100a.560 General indirect cost rates; exceptions.
100a.561 Approval of indirect cost rates.
100a.562 Indirect cost rates for educational training projects.
100a.563 Restricted indirect cost rate—programs covered.
100a.564 Restricted indirect cost rate—formula.
100a.565 Administrative charge.
100a.566 Fixed charges.
100a.567 Other expenditures.
100a.568 Using the restricted indirect cost rate.

Coordination

100a.580 Coordination with other activities.
100a.581 Methods of coordination.

Evaluation

100a.590 Evaluation by the grantee.
100a.591 Federal evaluation—cooperation by the grantee.
100a.592 Federal evaluation—satisfying requirement for grantee evaluation.

Construction

100a.600 Use of a grant for construction: purpose of §§ 100a.601–100a.615.
100a.601 Applicant's assessment of environmental impact.
100a.602 Preservation of historic sites must be described in the application.
100a.603 Grantee's title to site.
100a.604 Availability of cost-sharing funds.
100a.605 Beginning the construction.
100a.606 Completing the construction.
100a.607 General considerations in designing facilities and carrying out construction.
100a.608 Areas in the facilities for cultural activities.
100a.609 Comply with safety and health standards.
100a.610 Access by the handicapped.
100a.611 Avoidance of flood hazards.
100a.612 Supervision and inspection by the grantee.
100a.613 Relocation assistance by the grantee.
100a.614 Grantee must have operational funds.
100a.615 Operation and maintenance by the grantee.

Equipment and Supplies

100a.618 Charges for use of equipment or supplies.

Publications and Copyrights

100a.620 General conditions on publication.
100a.621 Copyright policy for grantees and contractors.
100a.622 Definition of "project materials."

Inventions and Patents

100a.625 Invention and patent policy.
100a.626 Show Federal support; give papers to vest title.

Other Requirements for Certain Projects

100a.650 Participation of students enrolled in private schools.
100a.681 Protection of human research subjects.
100a.682 Treatment of animals.
100a.683 Health or safety standards for facilities.
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General Administrative Responsibilities

100a.700 Compliance with statutes, regulations, and applications.
100a.701 The grantee administers or supervises the project.
100a.702 Fiscal control and fund accounting procedures.
100a.703 Obligation of funds during the grant period.
100a.707 When obligations are made.
100a.708 Prohibition of subgrants.

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100a.720 Financial and performance reports.
100a.721 Reports under the Joint Funding Simplification Act.

Records

100a.730 Records related to grant funds.
100a.731 Records related to compliance.
100a.732 Records related to performance.
100a.733 Records related to State approval of applications.
100a.734 Record retention period.

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100a.740 Protection of and access to student records.
100a.741 Protection of students' privacy in research and testing.

Data Collection by a Grantee

100a.750 Approval of data collection instruments.
100a.751 Procedures if approval is required.
100a.752 Responsibility for data collection.
100a.753 Confidentiality of response.
100a.754 Exemption from coverage.
100a.755 Definitions used in §§ 100a.750–100a.754.

Subpart G—What Procedures Does the Education Division Use To Get Compliance?

100a.900 Waiver of regulations prohibited.
100a.901 Suspension and termination.
100a.902 Informal procedures.
100a.903 Effective date of termination.

Authority: Sec. 408(a)(1) of Pub. L. 90–247, 88 Stat. 559, 560, as amended (20 U.S.C. 1221e–3(a)(1)), unless otherwise noted.

Subpart A—General

Regulations That Apply to Direct Grant Programs

§ 100a.1 Programs to which Part 100a applies.

The regulations in Part 100a apply to the programs of the Education Division that are listed in the following table. In addition to the name of the program, the table gives the statute that authorizes the program, the regulations that implement the program, and the number that the Catalog of Federal Domestic Assistance (CFDA) gives to the program.

(20 U.S.C. 1221e–3(a)(1))

Note.—Some programs are not currently funded. Check the application notices published each year. See § 100a.100.

Name of program	Authorizing statute	Implementing regulations (45 CFR)	CFDA No.
I. Office of the Assistant Secretary for Education			
Fund for the Improvement of Postsecondary Education	Section 404 of the General Education Provisions Act (20 U.S.C. 1221d).	Part 1501	13.925.
Capacity Building for Statistical Activities in State Educational Agencies.	Section 406 of the General Education Provisions Act (20 U.S.C. 1221–1).	Part 164	13.922.
II. National Institute of Education			
Programs of the National Institute of Education	Section 405 of the General Education Provisions Act (20 U.S.C. 1221e).	Parts 1430, 1450, 1451, 1460, 1470, 1480, 1490, and 1495.	13.950.
III. Institute of Museum Services			
Museum Services Program	Section 206 of the Museum Services Act (20 U.S.C. 965).	Part 64	13.923.

Name of program.	Authorizing statute	Implementing regulations (45 CFR)	CFDA No.
IV. Office of Education			
A. General Programs			
Program Planning and Evaluation	Section 416 of the General Education Provisions Act (20 U.S.C. 1226b).	None	None.
National Diffusion Network	Sections 303 and 376 of the Elementary and Secondary Education Act (20 U.S.C. 2943 and 3041).	Part 193	13.553.
B. Elementary and Secondary Education Programs			
School Construction in Areas Affected by Federal Activities	Public Law 81-815, except section 16 (20 U.S.C. 631-645, 647).	Part 114	13.477.
Entitlements for Handicapped Children	Section 3(d)(2)(C) of Public Law 81-874 (20 U.S.C. 238).	Part 115, Subpart H	13.478.
School Expenditures and Construction in Cases of Certain Disasters.	Sections 7 and 16 of Public Law 81-815 (20 U.S.C. 241-1 and 646).	Part 112	13.477 and 13.478.
Coordination of Migrant Education	Section 143 of the Elementary and Secondary Education Act (20 U.S.C. 2763).	None	None.
Transition of Neglected or Delinquent Children	Section 153 of the Elementary and Secondary Education Act (20 U.S.C. 2783).	None	13.431.
Basic Skills Improvement—National Program	Title II-A of the Elementary and Secondary Education Act (20 U.S.C. 2881-2890).	Part 162	13.599.
Special Projects for Improving Basic Skills	Title II-C of the Elementary and Secondary Education Act (20 U.S.C. 2911-2912).	Part 162	13.599.
Special Projects	Title III-A of the Elementary and Secondary Education Act (20 U.S.C. 2941-2943).	None	None.
Metric Education	Title III-B of the Elementary and Secondary Education Act (20 U.S.C. 2951-2954).	Part 161b	13.561.
Arts Education	Title III-C of the Elementary and Secondary Education Act (20 U.S.C. 2961-2963).	Part 161c	13.566.
Preschool Partnership	Title III-D of the Elementary and Secondary Education Act (20 U.S.C. 2971).	Part 161d	None.
Consumers' Education	Title III-E of the Elementary and Secondary Education Act (20 U.S.C. 2981-2986).	Part 161e	13.564.
Youth Employment	Title III-F of the Elementary and Secondary Education Act (20 U.S.C. 2991-2992).	Part 161f	None.
Law-Related Education	Title III-G of the Elementary and Secondary Education Act (20 U.S.C. 3001-3003).	Part 161g	13.693.
Environmental Education	Title III-H of the Elementary and Secondary Education Act (20 U.S.C. 3011-3018).	Part 161h	13.522.
Health Education	Title III-I of the Elementary and Secondary Education Act (20 U.S.C. 3021-3024).	Part 161i	None.
Correction Education	Title III-J of the Elementary and Secondary Education Act (20 U.S.C. 3031-3034).	Part 161j	None.
Dissemination of Information	Title III-K of the Elementary and Secondary Education Act (20 U.S.C. 3041).	None	None.
Biomedical Sciences	Title III-L of the Elementary and Secondary Education Act (20 U.S.C. 3051-3057).	Part 161l	13.691.
Population Education	Title III-M of the Elementary and Secondary Education Act (20 U.S.C. 3061-3062).	Part 161m	None.
Federal Financial Assistance for Strengthening State Departments of Education—Special Project Grants.	Section 505 of the Elementary and Secondary Education Act (as in effect Sept. 30, 1978).	See 43 FR 57254 (December 7, 1978)	None.
Comprehensive Educational Planning and Evaluation	Sections 531-534 of the Elementary and Secondary Education Act (as in effect Sept. 30, 1978).	See 43 FR 57254 (December 7, 1978)	None.
Bilingual Education	Title VII of the Elementary and Secondary Education Act (20 U.S.C. 3221-3261).	Parts 123, 123a, and 123b	13.403.
Financial Assistance for Demonstration Projects for Reducing School Dropouts.	Section 807 of the Elementary and Secondary Education Act (as in effect Sept. 30, 1978).	See 43 FR 57254 (December 7, 1978)	None.
Grants for Demonstration Projects to Improve School Health and Nutrition Services for Children from Low-Income Families.	Section 808 of the Elementary and Secondary Education Act (as in effect Sept. 30, 1978).	See 43 FR 57254 (December 7, 1978)	None.
Community Schools and Comprehensive Community Education.	Sections 809-813 of the Elementary and Secondary Education Act (20 U.S.C. 3289-3293).	Part 160c, Subparts C, D, and E	13.563.
Gifted and Talented Children	Section 905 of the Elementary and Secondary Education Act (20 U.S.C. 3315).	195	13.562.
Educational Proficiency Standards	Title IX-B of the Elementary and Secondary Education Act (20 U.S.C. 3331-3332).	None	None.
Women's Educational Equity	Title IX-C of the Elementary and Secondary Education Act (20 U.S.C. 3341-3348).	Part 160f	13.565.
Safe Schools	Title IX-D of the Elementary and Secondary Education Act (20 U.S.C. 3351-3354).	Part 161h	None.
Ethnic Heritage Studies Program	Title IX-E of the Elementary and Secondary Education Act (20 U.S.C. 3361-3367).	Part 184	13.549.
Follow Through Program	Sections 551-556 of the Economic Opportunity Act of 1964 (42 U.S.C. 2929-2929c).	Part 158	13.433.
Guidance and Counseling	Title III-D of the Education Amendments of 1976 (20 U.S.C. 2531-2534).	Part 191	13.577
C. Education of the Handicapped Programs			
Regional Resource Centers	Section 621 of the Education of the Handicapped Act (20 U.S.C. 1421).	Part 121b	13.450.
Centers and Services for Deaf-Blind Children	Section 622 of the Education of the Handicapped Act (20 U.S.C. 1422).	Part 121c	13.445.
Early Education for Handicapped Children	Section 623 of the Education of the Handicapped Act (20 U.S.C. 1423).	Part 121d	13.444.
Severely Handicapped Children	Section 624 of the Education of the Handicapped Act (20 U.S.C. 1424).	Part 121e	13.568.
Auxiliary Activities	Section 624 of the Education of the Handicapped Act (20 U.S.C. 1424).	Part 121e	None.
Training Personnel for the Education of the Handicapped	Sections 631, 632, and 634 of the Education of the Handicapped Act (20 U.S.C. 1431, 1432, 1434).	Part 121f	13.451.

Name of program	Authorizing statute	Implementing regulations (45 CFR)	CFDA No.
Recruitment of Personnel and Dissemination of Information	Section 633 of the Education of the Handicapped Act (20 U.S.C. 1433).	Part 121g	13.452.
Research in the Education of the Handicapped	Part E of the Education of the Handicapped Act (20 U.S.C. 1441–1444).	Part 121h	13.443.
Instructional Media for the Handicapped	Part F of the Education of the Handicapped Act (20 U.S.C. 1451–1454).	Part 121i	13.446.
Regional Education Programs for Handicapped Persons	Section 625 of the Education of the Handicapped Act (20 U.S.C. 1424a).	Part 121k	13.560.
Removal of Architectural Barriers to the Handicapped	Section 607 of the Education of the Handicapped Act (20 U.S.C. 1406).	None	None.
D. Occupational and Adult Education Programs			
Commissioner's Discretionary Programs of Vocational Education.	Title I–B and Section 103(a)(1)(B) of the Vocational Education Act (20 U.S.C. 2301–2461).	Part 105	13.498, 13.558, 13.586, 13.587, and 13.588.
Career Education—Model Programs	Section 10 of the Career Education Incentive Act (20 U.S.C. 2609).	161a	None.
Postsecondary Career Education Demonstration Program	Section 11 of the Career Education Incentive Act (20 U.S.C. 2610).	Part 161a	None.
Career Education Information Program	Section 12 of the Career Education Incentive Act (20 U.S.C. 2611).	Part 161a	None.
Adult Education Programs	Sections 309, 317, and 318 of the Adult Education Act (20 U.S.C. 1207a, 1211b, and 1211c).	Part 166	None.
E. Higher Education Programs			
College Library Resources Program	Title II–A of the Higher Education Act (20 U.S.C. 1021–1028).	Part 131	13.406.
Grants for Training in Librarianship	Section 222 of the Higher Education Act (20 U.S.C. 1031–1033).	Part 132	13.468.
Library Resources Demonstration	Section 223 of the Higher Education Act (20 U.S.C. 1034).	Part 133	13.475.
Strengthening Research Library Resources	Title II–C of the Higher Education Act (20 U.S.C. 1041–1046).	Part 136	13.576.
Modern Foreign Language and Area Studies (except Foreign Language and Area Studies Fellowships).	Title VI of the National Defense Education Act (except sections 511(b) and 603) (20 U.S.C. 511–513).	Part 146 (except Subpart D)	13.435 and 13.436.
Higher Education Programs in Modern Foreign Language Training and Area Studies.	Section 102(b)(6) of the Mutual Educational and Cultural Exchange Act (22 U.S.C. 2452(b)(6)).	Part 148	13.438, 13.439, 13.440, and 13.441.
Citizen Education for Cultural Understanding Program	Section 603 of the National Defense Education Act (20 U.S.C. 512a).	Part 146a	None.
Educational Opportunity Centers	Sections 417A and 417B of the Higher Education Act (20 U.S.C. 1070d and 1070d–1).	Part 154	13.543.
Upward Bound Program	Sections 417A and 417B of the Higher Education Act (20 U.S.C. 1070d and 1070d–1).	Part 155	13.492.
Special Services for Disadvantaged Students	Sections 417A and 417B of the Higher Education Act (20 U.S.C. 1070d and 1070d–1).	Part 157	13.482.
Talent Search Program	Sections 417A and 417B of the Higher Education Act (20 U.S.C. 1070d and 1070d–1).	Part 159	13.488.
Strengthening Developing Institutions Program	Title III of the Higher Education Act (20 U.S.C. 1051–1056).	Part 169	13.454.
Training for Higher Education Personnel	Section 533 of the Higher Education Act (20 U.S.C. 1119a–1).	Part 198	13.417.
Financial Assistance for Construction of Higher Education Facilities (except Loans for Construction of Academic Facilities and Annual Interest Grants for Construction of Academic Facilities).	Parts A and B of Title VII of the Higher Education Act (20 U.S.C. 1132a–1132b–1).	See 43 FR 57254 (December 7, 1978)	
Instructional Equipment Grants for Institutions of Higher Education.	Title VI of the Higher Education Act (20 U.S.C. 1121–1129a).	See 43 FR 57254 (December 7, 1978)	13.518.
Financial Assistance for Community Service and Continuing Education Programs—Special Programs and Projects.	Section 106 of the Higher Education Act (20 U.S.C. 1005a).	Part 173, Subpart C	13.557.
Cooperative Education Programs	Title VIII of the Higher Education Act (20 U.S.C. 1133–1133b).	Part 182	13.510.
Veteran's Cost-of-Instruction Payments to Institutions of Higher Education.	Section 420 of the Higher Education Act (20 U.S.C. 1070e–1).	Part 189	13.540.
Public Service Education Program—Public Service Institutional Grants.	Sections 901–904 of the Higher Education Act (20 U.S.C. 1134–1134c).	Part 194, Subpart A	13.555.
Graduate and Professional Study Institutional Grants	Sections 901–904 of the Higher Education Act (20 U.S.C. 1134–1134b).	Part 179 (except Subpart C)	13.580.
State Postsecondary Education Commissions Program—Inter-state Planning.	Section 1203(c) of the Higher Education Act (20 U.S.C. 1142b(c)).	None	13.550.
Community Colleges	Title X of the Higher Education Act (20 U.S.C. 1135 through 1135c–1).	None	None.
F. Other Programs			
Alcohol and Drug Abuse Education Program	Public Law 93–422 (20 U.S.C. 1001–1007)	Part 182a	13.420.
Television Program Assistance	Section 1527 of the Education Amendments of 1978 (20 U.S.C. 1221j).	None	None.
Teacher Corps Program	Section V–A of the Higher Education Act (20 U.S.C. 1101–1107a).	Part 172	13.489.
Teacher Centers Program	Section 532 of the Higher Education Act (20 U.S.C. 1119a).	Part 197	13.416.
Territorial Teacher Training	Section 1525 of the Education Amendments of 1978	None	None.
Education Information Management System	Section 400A (f) and (g) of the General Education Provisions Act (20 U.S.C. 1221–3 (f) and (g)).	None	None.
Indian Education Act (Part A)	Title IV–A of Public Law 92–318 (20 U.S.C. 241aa–241ff).	Parts 186 and 186a	13.534 and 13.551.

Name of program.	Authorizing statute	Implementing regulations (45 CFR)	CFDA No.
Indian Education Act (Part B) (except the Indian Fellowship Program)..	Title IV-B of Public Law 92-318 (20 U.S.C. 887c-1, 3385).	Parts 186 and 186b	13.535.
Indian Education Act (Part C)	Title IV-C of Public Law 92-318 (20 U.S.C. 1211a)	Parts 186 and 186c	13.536.
Desegregation of Public Education	Title IV of the Civil Rights Act of 1964 (42 U.S.C. 2000c through 2000c-5).	Part 180	13.405.
Emergency School Aid	Title VI of the Elementary and Secondary Education Act (20 U.S.C. 3191-3207).	Part 185	13.531, 13.532, 13.681, 13.682, 13.683, 13.684, 13.685, 13.687, and 13.689.
Racially Isolated School Districts	Section 1522 of the Education Amendments of 1978..	None	None.

§ 100a.2 Exceptions in program regulations to Part 100a.

If a program has regulations that are not consistent with Part 100a, the implementing regulations for that program identify the sections of Part 100a that do not apply.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.3 HEW general grant regulations apply to these programs.

The HEW general grant regulations in 45 CFR Part 74 of this title apply to the programs covered by this part. To find subjects covered under 45 CFR Part 74, look in the table of contents at the beginning of 45 CFR Part 74.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.4 Education Division contracts.

(a) A contract of the Education Division is governed by:

(1) Chapters 1 and 3 of Title 41 of the Code of Federal Regulations;

(2) Any applicable program regulations; and

(3) The request for proposals for the procurement, if any, referenced in *Commerce Business Daily.*

(b) The regulations in Part 100a do not apply to a contract of the Education Division unless regulations in Part 100a or a program's regulations specifically provide otherwise.

(20 U.S.C. 1221e-3(a)(1))

Eligibility for a Grant

§ 100a.50 How to find out whether you are eligible.

Eligibility to apply for a grant under a program of the Education Division is governed by the authorizing statute and implementing regulations for that program. The table in § 100a.1 references the statutes and regulations that apply to the direct grant programs of the Education Division.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.51 How to prove nonprofit status.

(a) Under some programs, an applicant must show that it is a nonprofit organization. (See the definition of "nonprofit" in 45 CFR 100c.1.)

(b) An applicant may show that it is a nonprofit organization by any of the following means:

(1) Proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under Section 501(c)(3) of the Internal Revenue Code;

(2) A statement from a State taxing body or the State attorney general certifying that—

(i) The organization is a nonprofit organization operating within the State; and

(ii) No part of its net earnings may lawfully benefit any private shareholder or individual;

(3) A certified copy of the applicant's certificate of incorporation or similar document if it clearly establishes the nonprofit status of the applicant; or

(4) Any item described in paragraphs (b) (1) through (3) of this section if that item applies to a State or national parent organization, together with a statement by the State or parent organization that the applicant is a local nonprofit affiliate.

(20 U.S.C. 1221e-3(a)(1))

Subpart B—[Reserved]

Subpart C—How To Apply for a Grant

The Application Notice

§ 100a.100 Publication of an application notice; content of the notice.

(a) Each fiscal year each appropriate official of the Education Division publishes application notices in the **Federal Register** that explain what kind of assistance is available under the programs that he or she administers.

(b) The application notice for a program explains one or more of the following:

(1) How to apply for a new grant.

(2) How to apply for a continuation award for an existing project already being funded under that program.

(3) If preapplications are used under the program, how to preapply for a new grant.

(20 U.S.C. 1221e-3(a)(1))

Note.—The term "appropriate official of the Education Division" is defined in 45 CFR 100c.1 to mean the official that has overall administrative responsibility for an Education Division program. Depending on the statutory authority for a given program, that official is—

(a) The Assistant Secretary;

(b) The Commissioner;

(c) The Director of the National Institute of Education; or

(d) The Director of the Institute of Museum Services.

§ 100a.101 Information in the application notice that helps an applicant apply.

(a) The application notice for each program gives important information that can help an applicant. The information usually includes—

(1) How an applicant can get an information package that contains detailed information about the program

and the application form that the applicant must use;

(2) Where in the Education Division an applicant must send its application;

(3) The amount of funds available for new grants;

(4) The number of new grants the Education Division expects to make under the program;

(5) The expected budget period, and the average amount of funding that the Education Division will provide to a new grant under the program;

(6) If the programs to approve multi-year projects, the project period that the Education Division will approve under the program;

(7) The amount of funds available for continuation awards under the program;

(8) The number continuation awards the Education Division expects to make under the program;

(9) The average amount of funding that the Education Division expects to provide in these continuation awards; and

(10) A reference to the regulations that apply to the program.

(b) If the appropriate official of the Education Division either requires or permits preapplications under a program, an application notice for the program explains how an applicant can get the preapplication form.

(20 U.S.C. 1221e-3(a)(1))

Cross-reference.—See 45 CFR 100c.1—definitions of "budget period" and "project period."

§ 100a.102 Deadline date for applications.

(a) The application notice for a program sets a deadline date for applications to be mailed or hand delivered to the Education Division.

(b) If an applicant wants a new grant, the applicant shall—

(1) Mail the application to the address specified in the application notice on or before the deadline date; or

(2) Hand deliver the application to the address specified in the application notice by 4:30 p.m. (Washington, D.C. time) on the deadline date.

(c) If an applicant wants a continuation award, the applicant, to be assured of consideration, shall—

(1) Mail the application to the address specified in the application notice on or before the deadline date; or

(2) Hand deliver the application to the address specified in the application notice by 4:30 p.m. (Washington, D.C. time) on the deadline date.

(d) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the appropriate official of the Education Division.

(e) If an application is mailed through the U.S. Postal Service, the appropriate official does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

(20 U.S.C. 1221e-3(a)(1))

Note.—The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

§ 100a.103 Deadline date for preapplications.

(a) If the appropriate official of the Education Division invites or requires preapplications under a program, the application notice for the program sets a deadline date for preapplications.

(b) An applicant shall submit its preapplication in accordance with the procedures for applications in § 100a.102(b) and (d).

(20 U.S.C. 1221e-3(a)(1))

§ 100a.104 Applicants must meet procedural rules.

The appropriate official of the Education Division may make a grant only to an eligible party that submits an application.

(20 U.S.C. 1221e-3(a)(1))

Application Contents

Cross-reference.—See § 100a.200 for a description of discretionary and formula grant programs.

§ 100a.107 Applications for new grants under a discretionary grant program.

In an application for a new grant under a discretionary grant program, the applicant shall include—

(a) Information that addresses each selection criterion that applies to the program;

(b) The information required by the following sections of EDGAR—

(1) Section 100a.110;

(2) Section 100a.112;

(3) Section 100a.116;

(4) Section 100a.117;

(5) The regulations noted after § 100a.118, if appropriate; and

(6) Section 100a.119, if appropriate; and

(c) All other information that is required under the particular program.

(20 U.S.C. 1221e-3(a)(1))

Cross-reference.—See 45 CFR Part 74, Subpart N—Forms for Applying for Grants.

§ 100a.108 Applications for new grants under a formula grant program.

In an application for a new grant under a formula grant program, the applicant shall include—

(a) The information required by the following sections of EDGAR—

(1) Sections 100a.110–100a.117;

(2) The regulations noted after § 100a.118 if appropriate; and

(3) Section 100a.119, if appropriate; and

(b) All other information that is required under the particular program.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.109 Changes to application; number of copies.

(a) Each applicant shall submit an original and two copies of its application to the Education Division, including any information that the applicant supplies voluntarily.

(b) An applicant may make changes to its application on or before the deadline date for submitting applications under the program.

(20 U.S.C. 1221e-3(a)(1))

Cross-reference.—See § 100a.200 How applications for new grants are selected for funding.

§ 100a.110 Assure compliance with appropriate requirements of law.

An application must include an assurance that a grantee will comply with the requirements imposed by the appropriate official of the Education Division concerning—

(a) Special requirements of law;

(b) Program requirements; and

(c) Administrative requirements.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.111 Describe the project.

An application must describe the project in detail. The description must include—

(a) The purpose of the project;

(b) The design of the project and the plan of management for the project;

(c) Each objective of the project and how the applicant plans to use its resources and personnel to achieve each objective;

(d) The characteristics of intended project participants and beneficiaries, including the extent to which intended participants and beneficiaries are persons who are members of groups that have been traditionally underrepresented, such as—

(1) Members of racial or ethnic minority groups;

(2) Women;

(3) Handicapped persons; and

(4) The elderly; and

(e) The expected effects of the project on persons who are members of groups that have been traditionally underrepresented.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.112 Include a proposed project period and a timeline.

(a) An application must propose a project period for the project.

(b) An application must describe when, in each budget period of the project, the applicant plans to meet each objective of the project.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.113 Describe the key personnel.

An application must include the name and qualifications of each key person in the proposed project. The following information must be included:

(a) The name and qualifications of the project director (if one is to be used.)

(b) The name and qualifications of each of any other key personnel in the project.

(c) The time that each person referred to in paragraphs (a) and (b) of this section plans to commit to the proposed project.

(d) If the name of the project director or any other key person is not known to the applicant when it submits the application, the application must specify the minimum qualifications for that person. This paragraph does not allow an applicant to omit the name or qualifications of the principal investigator for a proposed research project.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.114 Describe the resources.

An application must describe the resources the applicant plans to devote to the project, including—

(a) Facilities; and

(b) Equipment and supplies.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.115 Describe the evaluation plan.

An application must include a description of the applicant's plan to evaluate the project under § 100a.590, the authorizing statute of the program, and the implementing regulations of the program.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.116 Demonstrate capability; include evaluation of completed project.

(a) An application must include information to demonstrate the applicant's capability to—

(1) Conduct the project; and

(2) Meet the needs of the persons (if any) that the applicant plans to serve with the project.

(b) If an applicant wants a grant for a new project that furthers the objectives of a project already completed by the applicant, the applicant shall include any existing evaluation of the completed project.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.117 Information needed for a multi-year project.

An applicant that proposes a multi-year project shall include in its application—

(a) Information that shows why a multi-year project is needed;

(b) A budget for the first budget period of the project; and

(c) An estimate of the Federal funds needed for each budget period of the project after the first budget period.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.118 Application for a continuation award.

(a) An applicant shall comply with paragraph (b) of this section if—

(1) The applicant wants funds to continue a project already approved on a multi-year basis;

(2) The applicant is about to complete one or more of the budget periods; and

(3) The budget period for which the applicant wants a continuation award is within the approved project period.

(b) An applicant for a continuation award shall submit the following:

(1) A revised face page (standard form 424) and revisions to any other affected pages of the approved application.

(2) A budget that covers the next budget period, and an estimate of the amount of funds that will remain unobligated at the end of the current budget period.

(3) An estimate of the Federal funds needed for each budget period that comes after the next budget period.

(c) The appropriate official of the Education Division may also require the applicant to submit a report of project accomplishments to date.

(20 U.S.C. 1221e-3(a)(1))

Cross-reference.—See § 100a.117 Information needed for a multi-year project, and §§ 100a.250–100a.253 Approval of multi-year projects.

Note.—Other sections in this part may require an applicant to put information in its application. However, these sections are not included here because they either—

(1) Apply only to a limited number of programs; or

(2) Apply only under specified circumstances.

A list of these sections follows:

§ 100a.128 Who acts as applicant; the group agreement.

§ 100a.141 Certify that open meeting was held.

§ 100a.151 When an applicant under § 100a.150 must submit its application to the State; proof of submission.

§ 100a.156 When an applicant under § 100a.155 must submit its application to the State; proof of submission.

§ 100a.160 Procedures for State approval of or comment on preapplications.

§ 100a.172 Applicant shall show compliance with A–95 procedures.

§ 100a.192 Dissemination.

§ 100a.601 Applicant's assessment of environmental impact.

§ 100a.602 Preservation of historic sites must be described in the application.

§ 100a.119 Information needed if private school students participate.

If a program requires the applicant to provide an opportunity for participation of students enrolled in private schools, the application must include the information required of subgrantees under 45 CFR 100b.656.

(20 U.S.C. 1221e-3(a)(1))

Joint Funding Simplification Procedures

§ 100a.124 Applications and preapplications under the Joint Funding Simplification Act.

(a) The Joint Funding Simplification Act permits a State or local government or nonprofit organization to seek Federal funds from more than one program in a single application. An applicant shall use the Joint Funding Simplification Act procedures specified in this section if the applicant wants a grant that is funded in part from one Education Division direct grant program and funded in part from—

(1) One or more other Education Division direct grant programs;

(2) One or more other Federal agencies; or

(3) One or more State agencies.

(b) An applicant for a grant under this Act shall comply with the requirements in OMB Circular A–111 and the supplemental procedures in this part. The OMB circular was published in the **Federal Register** on July 30, 1976 (41 FR 32040). An applicant may obtain a copy of this circular by addressing its request to: Joint Funding Information, Director, Division of Regulations Management, Room 2129, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

(c) The supplemental procedures in this part are in—

(1) Section 100a.125;

(2) Section 100a.219(b);

(3) Section 100a.221;

(4) Section 100a.250(b);

(5) Section 100a.254; and

(6) Section 100a.721.

(d) An applicant for a grant under the Joint Funding Simplification Act does not have to comply with any deadline date for applications or preapplications

under an Education Division program from which the applicant seeks funds. However, the appropriate official of the Education Division does not reserve any program funds for jointly funded grants. For this reason, the appropriate official encourages an applicant for a jointly funded grant to apply before the fiscal year in which the grant is to be made or at least before the deadline for applications under the program for that fiscal year.

(42 U.S.C. 4252(a))

Separate Applications—Alternative Programs

§ 100a.125 Submit a separate application to each program; exception under the Joint Funding Simplification Act.

(a) An applicant shall submit a separate application to each program under which it wants a grant.

(b) If an applicant wants a grant under the Joint Funding Simplification Act, the applicant shall submit a single application under the procedures in OMB Circular A–111.

(20 U.S.C. 1221e–3(a)(1); 42 U.S.C. 4252(a))

§ 100a.126 Application must list all programs to which it is submitted.

If an applicant is submitting an application for the same project under more than one Federal program, the applicant shall list these programs in its application. The appropriate official of the Education Division uses this information to avoid duplicate grants for the same project.

(20 U.S.C. 1221e–3(a)(1))

Group Applications

§ 100a.127 Eligible parties may apply as a group.

(a) Eligible parties may apply as a group for a grant.

(b) Depending on the program under which a group of eligible parties seeks assistance, the term used to refer to the group may vary. The list that follows contains some of the terms used to identify a group of eligible parties:

(1) Combination of institutions of higher education.

(2) Consortium.

(3) Joint applicants.

(4) Cooperative arrangements.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.128 Who acts as applicant; the group agreement.

(a) If a group of eligible parties applies for a grant, the members of the group shall either—

(1) Designate one member of the group to apply for the grant; or

(2) Establish a separate, eligible legal entity to apply for the grant.

(b) The members of the group shall enter into an agreement that—

(1) Details the activities that each member of the group plans to perform; and

(2) Binds each member of the group to every statement and assurance made by the applicant in the application.

(c) The applicant shall submit the agreement with its application.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.129 Legal responsibilities of each member of the group.

(a) If the appropriate official of the Education Division makes a grant to a group of eligible applicants, the applicant for the group is the grantee and is legally responsible for—

(1) The use of all grant funds; and

(2) Ensuring that the project is carried out by the group in accordance with Federal requirements.

(b) Each member of the group is legally responsible to—

(1) Carry out the activities it agrees to perform; and

(2) Use the funds that it receives under the agreement in accordance with Federal requirements that apply to the grant.

(20 U.S.C. 1221e–3(a)(1))

Preapplications

§ 100a.130 Preapplications; purpose of §§ 100a.131–100a.134.

The appropriate official of the Education Division considers a preapplication under the procedures in §§ 100a.131–100a.134.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.131 Consideration of a preapplication.

The appropriate official of the Education Division is required to consider a preapplication if—

(a) The applicant complies with the procedural rules that govern submission of the preapplication; and

(b)(1) The preapplication is submitted in response to an application notice that invites or requires preapplications; or

(2) The preapplication is submitted by a government, as defined in 45 CFR 74.3.

Cross-reference—See Subpart N of 45 CFR Part 74.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.132 The effect of not submitting a preapplication.

(a) If the appropriate official of the Education Division invites but does not require preapplications under a program, an applicant may apply for a grant under the program even if the applicant did not preapply.

(b) If the appropriate official of the Education Division requires preapplications under a program and an applicant does not preapply, the applicant may not apply for a grant under the program.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.133 Result of a preapplication.

(a) If an applicant submits a preapplication under a program, the appropriate official of the Education Division—

(1) Informs the applicant that it is eligible and encourages it to apply for a grant under the program;

(2) Informs the applicant that it is eligible but does not encourage it to apply for a grant under the program; or

(3) Informs the applicant that it is ineligible for assistance under the program, and explains why the applicant is ineligible.

(b) An applicant may apply under a program even if the official does not encourage it to apply.

(20 U.S.C. 1221e–3(a)(1))

Cross-reference.—See § 100a.216 Returning an application to an applicant.

§ 100a.134 The basis for the preapplication decision.

To decided whether to encourage a preapplicant to apply, the appropriate official of the Education Division uses the same criteria that the official uses to select an applicant for a grant. (See §§ 100a.200–100a.206 for a description of how selection criteria work.)

(20 U.S.C. 1221e–3(a)(1))

Open Meeting Certification Under Certain ESEA Programs

§ 100a.138 Open meetings; purpose of §§ 100a.139–100a.141.

(a) Sections 100a.139–100a.141 implement Section 1006 of the Elementary and Secondary Education Act of 1965 (ESEA), as amended.

(b) Section 1006 requires a local educational agency that submits an application under certain ESEA programs to certify that it has held an open meeting regarding the contents of the application.

(c) Section 1006 applies to each ESEA program listed in § 100a.1.

(20 U.S.C. 887e)

§ 100a.139 The local educational agency shall hold an open meeting.

(a) If a local educational agency applies for a grant under an ESEA program listed in § 100a.1, the agency shall hold at least one meeting open to the public.

(b) The agency shall inform the people who attend the meeting of—

(1) The ESEA program under which the agency wants a grant;

(2) The kinds of activities that are authorized under the statute and the program regulations; and

(3) The activities for which the agency wants the grant.

(c) The agency shall give each person who attends the meeting an opportunity to comment or make recommendations on the agency's proposed activities.

(20 U.S.C. 887e)

§ 100a.140 Give notice of the open meeting; make information available.

(a) If a local educational agency must hold an open meeting under § 100a.139, the agency shall give notice of the time, place, and purpose of the meeting.

(b) The agency shall give notice that—

(1) Is likely to reach the general public in the area served by the project; and

(2) Gives the public time to prepare for the meeting.

(c) The agency shall take steps to ensure that persons who are members of groups that have been traditionally underrepresented receive the notice required by paragraph (b)(1) and that these persons are encouraged to participate in the meeting. These persons include—

(1) Members of racial or ethnic minority groups;

(2) Women;

(3) Handicapped persons; and

(4) The elderly.

(d) If students enrolled in private schools may participate under the program, the agency shall take steps to ensure that appropriate representatives of those children receive notice of and are encouraged to participate in the meeting.

(e) The agency shall make the following material available for inspection by the public at least 24 hours before the open meeting begins:

(1) An outline of the information described in § 100a.139(b).

(2) A draft copy of the agency's application, if the application has been prepared.

(20 U.S.C. 887e)

§ 100a.141 Certify that open meeting was held.

If a local educational agency must hold an open meeting under § 100a.139, the agency shall certify in its application that—

(a) The agency held at least one open meeting under § 100a.139;

(b) The agency gave notice of each open meeting in accordance with § 100a.140 (a) and (b);

(c) The agency made information available in accordance with § 100a.140(c)–(e);

(d) The agency gave meaningful consideration to any comments or recommendations that it received at each open meeting; and

(e) The agency amended its application, as appropriate, in light of those comments and recommendations.

(20 U.S.C. 887e)

State Approval Procedures

§ 100a.150 Review procedure if State must approve applications; purpose of §§ 100a.151–100a.153.

If the authorizing statute for a program requires the State to approve each application, the State and the applicant shall use the procedures in §§ 100a.151–100a.153.

(20 U.S.C. 1221e–3(a)(1))

Cross-reference.—See § 100a.160 Procedures for State approval of or comment on preapplications; and § 100a.733 Records related to State approval of applications.

§ 100a.151 When an applicant under § 100a.150 must submit its application to the State; proof of submission.

(a) Each applicant under a program covered by § 100a.150 of this Part shall submit a copy of its application to the State at least 15 days before the deadline date for submitting the application to the Education Division.

(b) The applicant shall attach to its application a copy of its letter that requests the State to approve the application.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.152 The State reviews each application.

Each State that receives an application under § 100a.151 of this Part shall review the application to decide if the State wishes to approve or disapprove the application.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.153 Deadlines for State approval.

(a) The appropriate official of the Education Division may publish in the **Federal Register** a notice that establishes a deadline date for receipt of State approvals of applications under a program covered by § 100a.150.

(b) If a State approves an application, the appropriate State official shall—

(1) Sign a statement that approves the application; and

(2) Submit the application and the statement by the deadline date for State approvals. The procedures in § 100a.102(c) (how to meet a deadline date) apply to this submission.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.154 Effect of State approval; failure to approve.

(a) If a State approves an application on or before the deadline date for State approval, the appropriate official of the Education Division may select that project for a grant.

(b) If a State does not approve an application on or before the deadline date for State approval, the appropriate official of the Education Division does not select that project for a grant.

(20 U.S.C. 1221e–3(a)(1))

State Comment Procedures

§ 100a.155 Review procedure if State may comment on applications: purpose of §§ 100a.156–100a.158.

If the authorizing statute or implementing regulations for a program require that a State be given an opportunity to comment on each application, the State and the applicant shall use the procedures in §§ 100a.156–100a.158.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.156 When an applicant under § 100a.155 must submit its application to the State; proof of submission.

(a) Each applicant under a program covered by § 100a.155 shall submit a copy of its application to the State on or before the deadline date for submitting its application to the Education Division.

(b) The applicant shall attach to its application a copy of its letter that requests the State to comment on the application.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.157 The State reviews each application.

A State that receives an application under § 100a.156 may review and comment on the application.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.158 Deadlines for State comments.

(a) The appropriate official of the Education Division may establish a deadline date for receipt of State comments on applications.

(b) The State shall make its comments in a written statement signed by an appropriate State official.

(c) The appropriate State official shall submit comments to the appropriate official of the Education Division by the deadline date for State comments. The procedures in § 100a.102 (b) and (d) (how to meet a deadline) of this Part apply to this submission.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.159 Effect of State comments or failure to comment.

(a) The appropriate official of the Education Division considers those comments of the State that relate to—

(1) Any selection criterion that applies under the program; or

(2) Any other matter that affects the selection of projects for funding under the program.

(b) If the State fails to comment on an application on or before the deadline date for the appropriate program, the State waives its right to comment.

(c) If the applicant does not give the State an opportunity to comment, the appropriate official of the Education Division does not select that project for a grant.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.160 Procedures for State approval of or comment on preapplications.

(a) If the authorizing statute for a program requires that a State approve each preapplication, the State and the applicant shall use the approval procedures in §§ 100a.151–100a.153 for the preapplication.

(b) If the authorizing statute or implementing regulations for a program require that a State be given an opportunity to comment on each preapplication, the State and the applicant shall use the comment procedures in §§ 100a.156–100a.158 for the preapplication.

(20 U.S.C. 1221e-3(a)(1))

OMB Circular A–95 Clearinghouse Procedures

§ 100a.170 Clearinghouse procedures: purpose of §§ 100a.170–100a.173.

(a) Sections 100a.170–100a.173 implement Part I of OMB circular A–95.

(b) Part I of OMB Circular A–95 requires an applicant under certain Federal programs to notify the appropriate State and areawide clearinghouses of the applicant's intent to apply. The clearinghouses may comment on the application.

(c) The following programs listed in § 100a.1 are covered by Part I of OMB Circular A–95:

Name of program	Authorizing statute	Implementing regulations	CFDA No.
Environmental Education	Title III-H of the Elementary and Secondary Education Act (20 U.S.C. 3011).	Part 161h	13.522
Follow Through Program	Sections 551–556 of the Economic Opportunity Act of 1964 (42 U.S.C. 2929–2929e).	Part 158	13.433
Model Programs under the Research in the Education of the Handicapped Program.	Section 641 of the Education of the Handicapped Act (20 U.S.C. 1441).	Part 121h	13.443
Community Service and Continuing Education Programs—Special Programs and Projects.	Section 106 of Title I of the Higher Education Act of 1965 (20 U.S.C. 1005a).	Part 173, Subpart C.	13.557
Financial Assistance for Construction of Higher Education Facilities (except Loans for Construction of Academic Facilities and Annual Interest Grants for Construction of Academic Facilities) (20 U.S.C. 1221e-3(a)(1)).	Parts A and B of Title VII of the Higher Education Act (20 U.S.C. 1132a–1132b–1).	See 43 FR 57254 (Dec. 7, 1978).	

§ 100a.171 Notify the appropriate clearinghouses.

(a) An applicant under a program listed in § 100a.170 shall include in its notice to the clearinghouses a summary of the project.

(b) If a clearinghouse to which a notice is submitted has specified what information is to be included in a summary, the applicant shall provide that information.

(c) If a clearinghouse to which a notice is submitted has not specified what information is to be included in a summary, the applicant shall provide the following information:

(1) The identity of the applicant.

(2) The geographic location of the proposed project (including a map, if appropriate).

(3) A brief description of the proposed project that helps the clearinghouses identify any State and local agencies that have plans or projects that may be affected by the project. The description must include—

(i) The type of project;

(ii) The purpose of the project;

(iii) The general size of the project;

(iv) The estimated cost of the project;

(v) The beneficiaries of the project; and

(vi) Any other information that will help the clearinghouses identify affected agencies.

(4) A statement that shows whether the applicant must prepare an Environmental Impact Statement.

(5) The name of the program and the Catalog of Federal Domestic Assistance number for the program.

(6) The date the applicant expects to submit its application to the Education Division.

(d) If an applicant uses the preapplication procedure in this subpart, the applicant shall submit a copy of the preapplication to the appropriate clearinghouses on the same date it submits the preapplication to the Education Division.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.172 Applicant shall show compliance with A–95 procedures.

An applicant under a program listed in § 100a.170 shall include either of the following in its application—

(a)(1) The comments of each clearinghouse that commented on the application; and

(2) A statement that the applicant considered those comments before submitting the application to the Education Division; or

(b) A statement that the applicant has used the procedures of Part I of OMB Circular A–95 but has not received any clearinghouse comments.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.173 The period for clearinghouse review; the effect of not complying with Part I of OMB Circular A–95.

(a) OMB Circular A–95 gives a clearinghouse 30 days to—

(1) Notify affected agencies and governments; and

(2) Consult with the applicant about the application.

(b) The Circular also permits a clearinghouse to take an additional 30 days to review the application and to transmit comments to the applicant.

(c) The appropriate official of the Education Division may make a grant under a program listed in § 100a.170 only if the applicant has complied with Part I of OMB Circular A–95.

(20 U.S.C. 1221e-3(a)(1))

Development of Curricula or Instructional Materials

§ 100a.190 Consultation.

Each applicant that intends to develop curricula or instructional materials under a grant is encouraged to assure that the curricula or materials will be developed in a manner conducive to dissemination, through continuing consultations with publishers, personnel of State and local educational agencies, teachers, administrators, community

representatives, and other individuals experienced in dissemination.

(20 U.S.C. 1231c(c)(1))

§ 100a.191 Consultation costs.

An applicant may budget reasonable consultation fees or planning costs in connection with the development of curricula or instructional materials.

(20 U.S.C. 1231c(c)(2))

§ 100a.192 Dissemination.

If an applicant proposes to publish and disseminate curricula or instructional materials under a grant, the applicant shall include an assurance in its application that the curricula or materials will reach the populations for which the curricula or materials were developed.

(20 U.S.C. 1231c(c)(3))

Subpart D—How Grants Are Made

Selection of New Projects

§ 100a.200 How applications for new grants are selected for funding.

(a) *Direct grant programs.* The Education Division administers two kinds of direct grant programs. A direct grant program is either a discretionary grant or a formula grant program.

(b) *Discretionary grant programs.* (1) A discretionary grant program is one that permits the appropriate official of the Education Division to use discretionary judgment in selecting applications for funding.

Cross-reference.—See § 100a.219 Exceptions to the procedures under § 100a.217.

(2) The appropriate official of the Education Division uses selection criteria to evaluate the applications submitted for new grants under a discretionary grant program.

(3) Sections 100a.202 through 100a.206 contain the EDGAR selection criteria. The EDGAR criteria used by a program are repeated in the program regulations. If a program does not have selection criteria, the appropriate official uses the EDGAR criteria, with each criterion weighted equally, to evaluate applications.

(c) *Formula grant programs.* (1) A formula grant program is one that entitles certain applicants to receive grants if they meet the requirements of the program. Applicants do not compete with each other for the funds, and each grant is either for a set amount or for an amount determined under a formula.

(2) The appropriate official of the Education Division applies the program statute and regulations to fund projects under a formula grant program. The EDGAR selection criteria in §§ 100a.202–100a.206 are not used to evaluate applications under these programs.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.201 How to use the selection criteria.

(a) *Unweighted criteria.* If the selection criteria for a program are not weighted, the appropriate official of the Education Division evaluates each criterion equally.

(b) *Weighted criteria.* (1) If the selection criteria for a program are weighted, the appropriate official of the Education Division assigns in the program regulations a total number of points that an applicant may receive under all of the criteria.

(2) The minimum weights assigned to EDGAR criteria that are used under a program are stated in §§ 100a.202–100a.206.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.202 Selection criterion—plan of operation.

(a) The appropriate official of the Education Division reviews each application for information that shows the quality of the plan of operation for the project.

(b) The official looks for information that shows—

(1) High quality in the design of the project;

(2) An effective plan of management that insures proper and efficient administration of the project;

(3) A clear description of how the objectives of the project relate to the purpose of the program;

(4) The way the applicant plans to use its resources and personnel to achieve each objective;

(5) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(i) Members of racial or ethnic minority groups;

(ii) Women;

(iii) Handicapped persons; and

(iv) The elderly; and

(6) For grants to be made after October 1, 1980 under a program that requires the applicant to provide an opportunity for participation of students enrolled in private schools—a clear description of how the applicant will provide that opportunity.

(c) Under a program using weighted selection criteria, this criterion is assigned at least 10 percent of the total number of points assigned to the program.

(20 U.S.C. 1221e–3(a)(1))

Note.—Paragraph (b)(5), which is intended to ensure equal access and treatment for groups that have been traditionally underrepresented, does not mean that a grantee may include participants in a project who are ineligible under the program that funds the project. For example, under the program Early Education for Handicapped Children (See § 100a.1), a grantee may not serve women or the elderly, and an applicant under that program would not consider these groups under paragraph (b)(5).

§ 100a.203 Selection criterion—quality of key personnel.

(a) The appropriate official of the Education Division reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(b) The official looks for information that shows—

(1) The qualifications of the project director (if one is to be used);

(2) The qualifications of each of the other key personnel to be used in the project;

(3) The time that each person referred to in paragraphs (b) (1) and (2) of this section will commit to the project; and

(4) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(i) Members of racial or ethnic minority groups;

(ii) Women;

(iii) Handicapped persons; and

(iv) The elderly.

(c) To determine personnel qualifications, the official considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(d) Under a program using weighted selection criteria, this criterion is assigned at least 7 percent of the total number of points assigned to the program.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.204 Selection criterion—budget and cost effectiveness.

(a) The appropriate official of the Education Division reviews each application for information that shows that the project has an adequate budget and is cost effective.

(b) The official looks for information that shows—

(1) The budget for the project is adequate to support the project activities; and

(2) Costs are reasonable in relation to the objectives of the project.

(c) Under a program using weighted selection criteria, this criterion is

assigned at least 5 percent of the total number of points assigned to the program.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.205 Selection criterion—evaluation plan.

(a) The appropriate official of the Education Division reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—See § 100a.590 Evaluation by the grantee.

(b) The official looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(c) Under a program using weighted selection criteria, this criterion, is assigned at least 5 percent of the total number of points assigned to the program.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.206 Selection criterion—adequacy of resources.

(a) The appropriate official of the Education Division reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(b) The official looks for information that shows—

(1) The facilities that the applicant plans to use are adequate; and

(2) The equipment and supplies that the applicant plans to use are adequate.

(c) Under a program using weighted selection criteria, this criterion is assigned at least 3 percent of the total number of points assigned to the program.

(20 U.S.C. 1221e–3(a)(1))

Selection Procedures

100a.215 How the Education Division selects a new project: purpose of §§ 100a.216–100a.222.

Sections 100a.216–100a.222 describe the process the appropriate official of the Education Division uses to select applications for new grants. All of these sections apply to a discretionary grant program. However, only § 100a.216 applies also to a formula grant program.

Cross-reference.—See § 100a.200(b) Discretionary grant program, and (e) Formula grant program.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.216 Returning an application to the applicant.

(a) The appropriate official of the Education Division returns an application to an applicant if—

(1) The applicant is not eligibile.

(2) The applicant does not comply with all of the procedural rules that govern the submission of the application;

(3) The application does not contain the information required under the program; or

(4) The proposed project cannot be funded under the authorizing statute or implementing regulations for the program.

(b) If the appropriate official of the Education Division returns an application under this section, the official includes a statement that explains why the application was returned.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.217 How the Education Division selects applications for new grants.

(a)(1) The appropriate official of the Education Division may use one or more groups of experts to evaluate the applications submitted under each program.

(2) Each group of experts consists of three or more persons who are qualified to evaluate the applications.

(3) In each group of experts, there must be at least one person who is not an employee of the Federal Government.

(4) A person may not serve as a member of a group of experts if—

(i) The person is an employee of HEW who is involved in the administration of the program for which the group is evaluating applications; or

(ii) The person was involved within the past year in the administration of the program for which the group is evaluating applications.

(5) However, if the appropriate official of the Education Division signs a waiver for a person covered by paragraph (a)(4) of this section, that person may serve as a member of a group of experts.

(b) A group of experts uses the selection criteria that apply to the program to evaluate the quality of each application.

(c) After the groups of experts have evaluated the applications, the appropriate official of the Education Division prepares a rank ordering of the applications. The rank ordering of applications is based solely on the evaluations of the applications by the groups of experts.

(d) The official then determines the order in which applications will be selected. The official makes these determinations on the basis of the selection criteria and any priorities or other program requirements that have been published in the **Federal Register** and apply to the selection of applications for new grants. The official may consider the following in making these determinations:

(1) The information in each application.

(2) The rank ordering of the applications.

(3) Any other information relevant to a criterion, priority, or other requirement that applies to the selection of applications for new grants.

(e) The official selects applications in the order determined under paragraph (d) of this section.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.218 Applications not selected for funding.

If an application is not selected for funding, the appropriate official of the Education Division informs the applicant why the application was not selected.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.219 Exceptions to the procedures under § 100a.217.

The appropriate official of the Education Division may select an application for funding without following the procedures in § 100a.217 if—

(a) The objectives of the project cannot be achieved unless the official makes the grant before the date grants can be made under the procedures in § 100a.217; or

(b) The applicant applies for funds under the Joint Funding Simplification Act; or

(c)(1) The application was evaluated by a group of experts under the preceding competition of the program;

(2) The group of experts rated the application high enough to deserve selection under § 100a.217; and

(3) The application was not selected for funding because the application was mishandled by the Education Division.

(20 U.S.C. 1221e–3(a)(1); 42 U.S.C. 4252(a))

§ 100a.220 Procedures the Education Division uses under § 100a.219(a).

If the special circumstances of § 100a.219(a) appear to exist for an application, the appropriate official of the Education Division uses the following procedures:

(a) The official assembles a board to review the application.

(b) The board consists of—

(1) A program officer of the program under which the applicant wants a grant;

(2) An Education Division grants officer; and

(3) An HEW employee who is not a program officer of the program but who is qualified to evaluate the application.

(c) The board reviews the application to decide if—

(1) The special circumstances under § 100a.219(a) are satisfied;

(2) The application rates high enough, based on the selection criteria, priorities, and other requirements that apply to the program, to deserve selection; and

(3) Selection of the application will not have an adverse impact on the budget of the program

(d) The board forwards the results of its review to the appropriate official of the Education Division.

(e) If each of the conditions in paragraph (c) of this section is satisfied, the appropriate official of the Education Division may select the application for funding.

(f) Even if the official does not select the application for funding, the applicant may submit its application under the procedures in Subpart C of this part.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.221 Procedures the Education Division uses under § 100a.219(b).

The appropriate official of the Education Division uses the following procedures for an application submitted under § 100a.219(b):

(a) The official assembles a board to review the application.

(b)(1) The board consists of—

(i) A program officer from each Education Division program under which the applicant wants funds;

(ii) An Education Division grants officer; and

(iii) An HEW employee who is not a program officer for any of the programs under which the applicant wants funds but who is qualified to review the application.

(2) The board may also include one or more persons who do not work for HEW but who are qualified to review the application.

(c) The board reviews the application to decide if—

(1) The proposed project is feasible, and is consistent with Federal and agency policies concerning the scope and purpose of joint funding;

(2) The applicant has properly demonstrated a relationship among the programs included in the joint funding project;

(3) The proposed project is competitive with similar requests for program funds, including the applications submitted under the procedures in § 100a.217;

(4) There will not be an adverse impact on the budget of any Education Division program under which the applicant wants funds if the project is funded; and

(5) The application rates high enough to deserve funding, based on the selection criteria and other requirements that apply to each Education Division program under which the applicant wants funds.

(d) The board forwards the results of its review to the appropriate official of the Education Division.

(e) If each of the conditions in paragraph (c) of this section is satisfied, the appropriate official may—

(1) Select the project for funding; and

(2) Decide which Education Division programs will fund the project.

(42 U.S.C. 4252(a))

§ 100a.222 Procedures the Education Division uses under § 100a.219(c).

If the special circumstances of § 100a.219(c) appear to exist for an application, the appropriate official of the Education Division may select the application for funding if—

(a) The official has documentary evidence that the special circumstances of § 100a.219(c) exist; and

(b) The official has a statement that explains the circumstances of the mishandling.

(20 U.S.C. 1221e–3(a)(1))

Procedures To Make a Grant

§ 100a.230 How the Education Division makes a grant; purpose of §§ 100a.231–100a.236.

If the appropriate official of the Education Division selects an application under §§ 100a.217, 100a.220, or 100a.222, the official follows the procedures in §§ 100a.231–100a.236 to set the amount and determine the conditions of a grant. Sections 100a.235–100a.236 also apply to grants under formula grant programs.

Cross-reverence.—See § 100a.200 How applications for new grants are selected for funding.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.231 Additional information.

After selecting an application for funding, the appropriate official of the Education Division may require the applicant to submit additional information.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.232 The cost analysis; basis for grant amount.

(a) Before the appropriate official of the Education Division sets the amount of a grant, the official does a cost analysis of the project. The official—

(1) Verifies the cost data in the detailed budget for the project;

(2) Evaluates specific elements of costs; and

(3) Examines costs to determine if they are necessary, reasonable, and allowable under applicable statutes and regulations.

(b) The official uses the cost analysis as a basis for determining the amount of the grant to the applicant. The cost analysis shows whether the applicant can achieve the objectives of the project with reasonable efficiency and economy under the budget in the application.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.233 Setting the amount of the grant.

The appropriate official of the Education Division may fund up to 100 percent of the allowable costs in the budget. In deciding what percent of the allowable costs to fund, the official considers—

(a) Matching or cost sharing requirements that apply; and

(b) Any other financial resources available to the applicant.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.234 The conditions of the grant.

The appropriate official of the Education Division makes a grant to an applicant only after determining—

(a) The approved costs; and

(b) Any special conditions.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.235 The notification of grant award.

(a) To make a grant, the appropriate official issues a notification of grant award and sends it to the grantee.

(b) The notification of grant award sets the amount of the grant and gives other information about the grant.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.236 Effect of the grant.

The grant obligates both the Federal Government and the grantee to the requirements that apply to the grant.

(20 U.S.C. 1221e–3(a)(1))

Cross-reference.—See 45 CFR Part 74, Subpart L—Programmatic Changes and Budget Revisions.

Approval of Multiyear Projects

§ 100a.250 Project period can be up to 60 months.

(a) The appropriate official of the Education Division may approve a project period of up to 60 months.

(b) If a project is approved under the Joint Funding Simplification Act, the appropriate official may approve a project period of up to 60 months even if the official has restricted the project period for other projects under the program.

(20 U.S.C. 1221e–3(a)(1); 42 U.S.C. 4252(a))

§ 100a.251 The budget period.

(a) The appropriate official of the Education Division usually approves a budget period of not more than 12 months, even if the project has a multi-year project period.

(b) If the official approves a multi-year project period, the official—

(1) Makes a grant to the project for the initial budget period; and

(2) Indicates his or her intention to make contination awards to fund the remainder of the project period.

(20 U.S.C. 1221e–3(a))

§ 100a.253 Continuation of a multi-year project after the first budget period.

(a) The appropriate official of the Education Division may make a continuation award for a budget period after the first budget period of an approved multi-year project if—

(1) The Congress has appropriated sufficient funds under the program;

(2) The official is satisfied that the grantee will satisfactorily complete the budget period that is about to end;

(3) The grantee has submitted every report that it must submit before the date of the continuation award; and

(4) Continuation of the project is in the best interest of the Federal Government.

(b) Subject to the criteria in paragraph (a) of this section, in selecting applications for funding under a program the appropriate official of the Education Division gives priority to contination awards over new grants.

(c) In determining the amount of a continuation award, the official reduces the amount of funds needed for the next budget period by the amount of funds that remain available from the current budget period.

(d) A grantee that is in the final budget period of a project period may seek continued assistance for the project under the procedures for selecting new projects.

Cross-reference.—See Subpart C—How to Apply for a Grant.

(20 U.S.C. 1221e–3(a)(1))

Cross-reference.—See § 100a.117 Information needed for a multi-year project; and § 100a.118 Application for a continuation award.

§ 100a.254 Continuation of a multi-year project under the Joint Funding Simplification Act.

(a) If the conditions in § 100a.253(a) are met, the appropriate official of the Education Division may make a continuation award to a multi-year project funded under the Joint Funding Simplification Act.

(b) The appropriate official decides whether to make a continuation award in cooperation with any other Federal agencies or any State agencies that are also funding the proeject.

(42 U.S.C. 4252(a))

Miscellaneous

§ 100a.260 Allotments and reallotments.

(a) Under some of the programs listed in § 100a.1, the appropriate official of the Education Division allots funds under a statutory or regulatory formula.

(b) Any reallotment to other grantees will be made by the official in accordance with the authorizing statute for that program.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.261 Extension of a project period.

The appropriate official of the Education Division may extend a project period if—

(a) Special or unusual circumstances will delay completion of the project;

(b) The grantee provides the official with a written request for the extension at least 45 days before the end of the project period;

(c) The grantee states the reasons why it needs the extension;

(d) The extension does not violate any statute or regulations;

(e) The extension does not involve the obligation of additional Federal funds; and

(f) The extension is to carry out the activities in the approved application.

(20 U.S.C. 1221e–3(a)(1))

Subpart E—What Conditions Must Be Met by a Grantee?

Nondiscrimination

§ 100a.500 Federal statutes and regulations on nondiscrimination.

Each grantee shall comply with the following statutes and regulations:

Subject	Statute	Regulations
Discrimination on the basis of race, color or national origin.	Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d through 2000d–4).	45 CFR Part 80.
Discrimination on the basis of sex.	Title IX of the Education Amendments of 1972 (20 U.S.C. 1681–1683).	45 CFR Part 86.
Discrimination on the basis of handicap.	Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).	45 CFR Part 84.
Discrimination on the basis of age.	The Age Discrimination Act (42 U.S.C. 6101 *et seq.*).	45 CFR Part 90.

(20 U.S.C. 1221e–3(a)(1))

Project Staff

§ 100a.510 Use of a project director.

(a) This section applies to each grantee that uses a project director to administer its project.

(b) The grantee shall insure that its project director has—

(1) Appropriate professional qualifications, experience, and administrative skills, and

(2) A clear commitment to the objectives of the project.

(c) The grantee shall give its project director sufficient authority to conduct the project effectively.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.511 Waiver of requirement for a full-time project director.

(a) If regulations under a program require a full-time project director, the appropriate official of the Education Division may waive that requirement under the following conditions:

(1) The project will not be adversely affected by the waiver.

(2)(i) The project director is needed to coordinate two or more related projects; or

(ii) The project director must teach a minimum number of hours to retain faculty status.

(b) The waiver either permits the grantee—

(1) To use a part-time project director; or

(2) Not to use any project director.

(c)(1) An applicant or a grantee may request the waiver.

(2) The request must be in writing and must demonstrate that a waiver is appropriate under this section.

(3) The appropriate official of the Education Division gives the waiver in writing. The waiver is effective on the date the official signs the waiver.

(20 U.S.C. 1221e–3(a)(1))

Cross-reference.—See 45 CFR 74.103(c) Changes in key people in a research project.

§ 100a.515 Use of consultants.

(a) Subject to Federal statutes and regulations, a grantee shall use its general policies and practices when it hires, uses, and pays a consultant as part of the project staff.

(b) The grantee may not use its grant to pay a consultant unless—

(1) There is a need in the project for the services of that consultant; and

(2) The grantee cannot meet that need by using an employee rather than a consultant.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.516 Compensation of consultants—employees of institutions of higher education.

If an institution of higher education receives a grant for research or for educational services, it may pay a consultant's fee to one of its employees only in unusual circumstances and only if—

(a) The work performed by the consultant is in addition to his or her regular departmental load; and

(b)(1) The consultation is across departmental lines; or

(2) The consultation involves a separate or remote operation.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.517 Changes in key staff members.

A grantee shall comply with 45 CFR 74.103(c)(2) concerning replacement or lesser involvement of any key project staff, whether or not the grant is for research.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.518 Minimum wage rates.

The grantee shall pay a project staff member not less than any minimum wage required under Federal Law.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.519 Dual compensation of staff.

A grantee may not use its grantee to pay a project staff member for time or work for which that staff member is compensated from some other source of funds.

(20 U.S.C. 1221e-3(a)(1))

Conflict of Interest

§ 100a.524 Conflict of interest: purpose of § 100a.525.

(a) The conflict of interest regulations of the Education Division that apply to a grant are in § 100a.525.

(b) These conflict of interest regulations do not apply to a "government" as defined in 45 CFR 74.3.

Note.—A government must provide a conflict of interest assurance under the standard application required by Subpart N of 45 CFR Part 74 (Forms for Applying for Grants).

(c) The regulations in § 100a.525 do not apply to a grantee's procurement contracts. The conflict of interest regulations that cover those procurement contracts are in 45 CFR Part 74.

Subpart P—Procurement Standards

(20 U.S.C. 1221e-3(a)(1))

§ 100a.525 Conflict of interest: participation in a project.

(a) A grantee may not permit a person to participate in an administrative decision regarding a project if—

(1) The decision is likely to benefit that person or a member of his or her immediate family; and

(2) The person—

(i) Is a public official; or

(ii) Has a family or business relationship with the grantee.

(b) A grantee may not permit any person participating in the project to use his or her position for a purpose that is—or gives the appearance of being—motivated by a desire for a private financial gain for that person or for others.

(20 U.S.C. 1221e-3(a)(1))

Allowable Costs

§ 100a.530 General cost principles.

The general principles to be used in determining costs applicable to grants and cost-type contracts under grants are referenced in Subpart Q of 45 CFR Part 74 (Cost Principles).

(20 U.S.C. 1221e-3(a)(1))

Cross-reference.—See 45 CFR Part 74, Subpart G—Matching or Cost Sharing.

§ 100a.531 Limit on total cost of a project.

A grantee shall insure that the total cost to the Federal Government is not more than the amount stated in the notification of grant award.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.532 Use of funds for religion prohibited.

(a) No grantee may use its grant to pay for any of the following:

(1) Religious worship, instruction, or proselytization.

(2) Equipment or supplies to be used for any of those activities.

(3) Construction, remodeling, repair, operation, or maintenance of any facility or part of a facility to be used for any of those activities.

(4) An activity of a school or department of divinity.

(b) As used in this section, "school or department of divinity" means an institution or a component of an institution whose program is specifically for the education of students to—

(1) Prepare them to enter into a religious vocation; or

(2) Prepare them to teach theological subjects.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.533 Acquisition of real property; construction.

No grantee may use its grant for acquisition of real property or for construction unless specifically permitted by the authorizing statute or implementing regulations for the program.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.534 Training grants—automatic increases for additional dependents.

The appropriate official of the Education Division increases an educational training grant to cover the cost of additional dependents not specified in the notification of grant award if—

(a) Allowances for those dependents are authorized by the program statute and are allowable under the grant; and

(b) Appropriations are available to cover the cost.

(20 U.S.C. 1221e-3(a)(1))

Indirect Cost Rates

§ 100a.560 General indirect cost rates; exceptions.

(a) Appendices C–F to 45 CFR Part 74 describe the differences between direct and indirect costs and include the principles for determining the general indirect cost rate that a grantee may use for grants under most programs.

(b) Sections 100a.562–100a.568 provide restrictions on indirect cost rates under certain programs.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.561 Approval of indirect cost rates.

(a) The appropriate official of the Education Division approves an indirect cost rate for a grantee other than a local educational agency. For the purposes of this section, the term "local educational agency" does not include a State agency.

(b) Each State educational agency, on the basis of a plan approved by the Commissioner, shall approve an indirect cost rate for each local educational agency that requests it to do so.

(c) Each indirect cost rate must be approved annually.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.562 Indirect cost rates for educational training projects.

(a) The appropriate official of the Education Division may approve an indirect cost rate for an educational training project at the lesser of—

(1) The actual indirect cost rate of the grantee; or

(2) Eight percent of the total direct costs of the project.

(b) This section does not apply to—

(1) A State (as defined in 45 CFR 74.3); or

(2) A local government (as defined in 45 CFR 74.3).

(20 U.S.C. 1221e-3(a)(1))

§ 100a.563 Restricted indirect cost rate—programs covered.

Sections 100a.564–100a.568 apply to each program that has a statutory requirement not to use Federal funds to supplant non-Federal funds. These programs include the following:

Program	Authorizing statute
Bilingual Education	Title VII–A of the Elementary and Secondary Education Act
Consumer Education Program	Title III–E of the Elementary and Secondary Education Act
Environmental Education Program.	Title III–H of the Elementary and Secondary Education Act
Safe Schools	Title IX–D of the Elementary and Secondary Education Act
Follow Through Program	Sections 551–556 of the Economic Opportunity Act of 1964
National Alcohol and Drug Abuse Prevention Program.	Public Law 93–422
Indian Education Act (Part A)	Title IV–A of Public Law 92–318

(20 U.S.C. 1221e–3(a)(1))

§ 100a.564 Restricted indirect cost rate—formula.

(a) An indirect cost rate for a grant under a program covered by § 100a.563 is determined by the following formula:

Indirect cost rate = (Administrative charge + Fixed charges) ÷ (Other expenditures)

(b) Administrative charges, fixed charges, and other expenditures must be determined under §§ 100a.565–100a.567.

(c) Under the programs covered by § 100a.563, a grantee other than a State or a local government (as those terms are defined in 45 CFR 74.3) may use—

(1) An indirect cost rate computed under paragraph (a) of this section; or

(2) An indirect cost rate of eight percent unless the appropriate official of the Education Division determines that the grantee would have a lower rate under paragraph (a) of this section.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.565 Administrative charge.

(a) As used in § 100a.564, "administrative charge" means the cost of an activity that is for the direction and control of the grantee's affairs that are organization-wide. An activity is not organization-wide if it is limited to one activity, one component of the grantee, one subject, one phase of operations, or other single responsibility.

(b) The term includes the cost of performing a service function, such as accounting, payroll preparation, or personnel management, that is normally at the grantee's level even if the function is physically located elsewhere for convenience or better management.

(c) The term does not include expenditures for—

(1) The governing body of the grantee;

(2) Compensation of the chief Administrative officer of the grantee;

(3) Compensation of the chief administrative officer of any component of the grantee; and

(4) Operation of the immediate offices of these officers.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.566 Fixed charges.

As used in § 100a.564, "fixed charges" means contributions of the grantee to—

(a) Retirement, including State, county, or local retirement funds, Social Security, and pension payments;

(b) Unemployment compensation payments;

(c) Property, employee, health, and liability insurance; and

(d) All similar costs normally considered to be employee fringe benefits.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.567 Other expenditures.

(a) As used in § 100a.564, "other expenditures" means the grantee's total expenditures for its federally- and non-federally-funded activities in the most recent year for which data are available.

(b) The term does not include—

(1) Administrative charges determined under § 100a.565;

(2) Fixed charges determined under § 100a.566;

(3) Capital outlay;

(4) Debt service;

(5) Fines and penalties;

(6) Contingencies; and

(7) Election expenses. However, the term does include election expenses that result from elections required by a program statute.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.568 Using the restricted indirect cost rate.

(a) Under the programs referenced in § 100a.563, the maximum amount of indirect costs under a grant is determined by the following formula:

Indirect costs = (Indirect cost rate) × (Total direct costs of the grant minus any costs for capital outlay, debt service, or election expenses unless the election is required by a program statute)

(b) If a grantee uses an indirect cost rate, the administrative and fixed charges covered by that rate must be excluded by the grantee from the direct costs it charges to the grant.

U.S.C. 1221e–3(a)(1))

Coordination

§ 100a.580 Coordination with other activities.

(a) A grantee shall, to the extent possible, coordinate its project with other activities that are in the same geographic area served by the project and that serve similar purposes and target groups.

(b) A grantee whose project includes activities to improve the basic skills of children, youth, or adults shall, to the extent possible, coordinate its project with other basic skills activities that are in the same geographic area served by the project.

(c) For the purposes of this section, "basic skills" means reading, mathematics, and effective communication, both written and oral.

(d) The grantee shall continue its coordination during the project period.

(20 U.S.C. 1221e–3(a)(1); 2890)

§ 100a.581 Methods of coordination.

Depending on the objectives and requirements of its project, a grantee shall use one or more of the following methods of coordination:

(a) Planning the project with organizations and individuals who have similar objectives or concerns.

(b) Sharing information, facilities, staff, services, or other resources.

(c) Engaging in joint activities such as instruction, needs assessment, evaluation, monitoring, and technical assistance or staff training.

(d) Using the grant funds so as not to duplicate or counteract the effects of funds made available under other programs.

(e) Using the grant funds to increase the impact of funds made available under other programs.

(20 U.S.C. 1221e–3(a)(1))

Evaluation

§ 100a.590 Evaluation by the grantee.

A grantee shall evaluate at least annually—

(a) The grantee's progress in achieving the objectives in its approved application;

(b) The effectiveness of the project in meeting the purposes of the program; and

(c) The effect of the project on persons being served by the project, including—

(1) Any persons who are members of groups that have been traditionally underrepresented, such as—

(i) Members of racial or ethnic minority groups;

(ii) Women;

(iii) Handicapped persons; and

(iv) The elderly; and

(2) If the program statute requires that private school students be provided an opportunity to participate, the students who are enrolled in private schools.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.591 Federal evaluation—cooperation by a grantee.

A grantee shall cooperate in any evaluation of the program by the Secretary or the appropriate offical of the Education Division.

(20 U.S.C. 1226c, 1231a)

§ 100a.592 Federal evaluation—satisfying requirement for grantee evaluation.

If a grantee cooperates in a Federal evaluation of a program, the appropriate official of the Education Division may determine that the grantee meets the evaluation requirements of the program, including § 100a.590.

(20 U.S.C. 1226c, 1231a)

Construction

Cross-reference.—See 45 CFR Part 74, Subpart P—Procurement Standards.

§ 100a.600 Use of a grant for construction: purpose of §§ 100a.601-100a.615.

Sections 100a.601–100a.615 apply to—

(a) An applicant that requests funds for construction; and

(b) A grantee whose grant includes funds for construction.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.601 Applicant's assessment of environmental impact.

An applicant shall include with its application its assessment of the impact of the proposed construction on the quality of the environment in accordance with Section 102(2)(C) of the National Environmental Policy Act of 1969 and Executive Order 11514 (34 FR 4247).

(42 U.S.C. 4332(2)(C))

§ 100a.602 Preservation of historic sites must be described in the application.

(a) An applicant shall describe in its application the relationship of the proposed construction to and probable effect on any district, site, building, structure, or object that is—

(1) Included in the National Register of Historic Places; or

(2) Eligible under criteria established by the Secretary of Interior for inclusion in the National Register of Historic Places.

(Cross-reference.—See 36 CFR Part 60 for these criteria.)

(b) In deciding whether to make a grant, the appropriate official of the Education Division considers—

(1) The information provided by the applicant under paragraph (a) of this section; and

(2) Any comments by the Advisory Council on Historic Preservation.

Cross-reference.—See 36 CFR Part 800, which provides for comments from the Council.

(16 U.S.C. 470f)

§ 100a.603 Grantee's title to site.

A grantee must have or obtain a full title or other interest in the site, including right of access, that is sufficient to insure the grantee's undisturbed use and possession of the facilities for 50 years or the useful life of the facilities, whichever is longer.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.604 Availability of cost-sharing funds.

A grantee shall ensure that sufficient funds are available to meet any non-Federal share of the cost of constructing the facility.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.605 Beginning the construction.

(a) A grantee shall begin work on construction within a reasonable time after the grant for the construction is made.

(b) Before construction is advertised or placed on the market for bidding, the grantee shall get approval by the appropriate official of the Education Division of the final working drawings and specifications.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.606 Completing the construction.

(a) A grantee shall complete its construction within a reasonable time.

(b) The grantee shall complete the construction in accordance with the application and approved drawings and specifications.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.607 General considerations in designing facilities and carrying out construction.

(a) A grantee shall insure that the construction is—

(1) Functional;

(2) Economical; and

(3) Not elaborate in design or extravagant in the use of materials, compared with facilities of a similar type constructed in the State or other applicable geographic area.

(b) The grantee shall, in developing plans for the facilities, consider excellence of architecture and design and inclusion of works of art. The grantee may not spend more than one percent of the cost of the project on inclusion of works of art.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.608 Areas in the facilities for cultural activities.

A grantee shall make reasonable provision, consistent with the other uses to be made of the facilities, for areas in the facilities that are adaptable for artistic and other cultural activities.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.609 Comply with safety and health standards.

In planning for and designing facilities, a grantee shall observe—

(a) The standards under the Occupational Safety and Health Act of 1970 (Pub. L. 91-576) (See 36 CFR Part 1910); and

(b) State and local codes, to the extent that they are more stringent.

(29 U.S.C. 651)

§ 100a.610 Access by the handicapped.

A grantee shall comply with the Federal regulations on access by the handicapped that apply to construction and alteration of facilities. These regulations are—

(a) For residential facilities—24 CFR Part 40; and

(b) For non-residential facilities—41 CFR Subpart 101-19.6.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.611 Avoidance of flood hazards.

In planning the construction, a grantee shall, in accordance with the provisions of Executive Order 11988 of February 10, 1978 (43 FR 6030) and rules and regulations that may be issued by the Secretary to carry out those provisions—

(a) Evaluate flood hazards in connection with the construction; and

(b) As far as practicable, avoid uneconomic, hazardous, or unnecessary use of flood plains in connection with the construction.

(Executive Order 11296.)

§ 100a.612 Supervision and inspection by the grantee.

A grantee shall maintain competent architectural engineering supervision and inspection at the construction site to insure that the work conforms to the approved drawings and specifications.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.613 Relocation assistance by the grantee.

A grantee is subject to the regulations on relocation assistance and real property acquisition in 45 CFR Part 15.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.614 Grantee must have operational funds.

A grantee shall insure that, when construction is completed, sufficient funds will be available for effective operation and maintenance of the facilities.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.615 Operation and maintenance by the grantee.

A grantee shall operate and maintain the facilities in accordance with applicable Federal, State, and local requirements.

(20 U.S.C. 1221e–3(a)(1))

Equipment and Supplies

Cross-reference.—See 45 CFR Part 74, Subpart O—Property.

§ 100a.618 Charges for use of equipment or supplies.

A grantee may not charge students or school personnel for the ordinary use of equipment or supplies purchased with grant funds.

(20 U.S.C. 1221e–3(a)(1))

Publications and Copyrights

§ 100a.620 General conditions on publication.

(a) *Content of materials.* Subject to any specific requirements that apply to its grant, a grantee may decide the format and content of project materials that it publishes or arranges to have published.

(b) *Required statement.* The grantee shall ensure that any publication that contains project materials also contains the following statements:

"The contents of this (insert type of publication; e.g., book, report, film) were developed under a grant from the (insert name of agency in the Education Division that provided the grant), Department of Health, Education, and Welfare. However, those contents do not necessarily represent the policy of that agency, and you should not assume endorsement by the Federal Government."

(20 U.S.C. 1221e–3(a)(1))

§ 100a.621 Copyright policy for grantees and contractors.

(a) A grantee may copyright project materials in accordance with 45 CFR Part 74.

(b) A contractor may not copyright any project materials developed under the contract unless specifically permitted in the contract to do so.

(20 U.S.C. 1221e–3(a)(1))

Cross-reference.—See 45 CFR Part 74, Subpart F—Grant-Related Income; and 45 CFR 74.145 Copyrights.

§ 100a.622 Definition of "project materials."

As used in §§ 100a.620–100a.621, "project materials" means a copyrightable work developed with funds from a grant or contract of the Education Division.

(20 U.S.C. 1221e–3(a)(1))

Inventions and Patents

Cross-reference.—See 45 CFR Part 74.44 Inventions and Patents.

§ 100a.625 Invention and patent policy.

Grantees and contractors are subject to the HEW policy in 45 CFR Parts 6 and 8 regarding inventions and patents.

§ 100a.626 Show Federal support; give papers to vest title.

(a) Any patent application filed by a grantee for an invention made under a grant must include the following statement in the first paragraph:

"The invention described in this application was made under a grant from the (insert name of agency in the Education Division that gave the grant), Department of Health, Education, and Welfare."

(b) On request, the grantee shall furnish HEW with executed instruments prepared by the Federal Government, and other papers that may be necessary, to vest in the Federal Government the rights reserved in accordance with a determination made under 45 CFR Part 8. These instruments and papers enable the Government to apply for and prosecute a patent application, in any country, to cover each invention for which the Federal Government has the right to file an application.

(20 U.S.C. 1221e–3(a)(1))

Other Requirements for Certain Projects

Cross-reference.—See 45 CFR Part 74, Subpart C—Bonding and Insurance.

§100a.650 Participation of students enrolled in private schools.

If the authorizing statute for a program requires a grantee to provide for participation by students enrolled in private schools, the grantee shall provide a genuine opportunity for equitable participation in accordance with the requirements that apply to subgrantees under 45 CFR 100b.650–100b.662.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.681 Protection of human research subjects.

If a grantee uses a human subject in a research project, the grantee shall protect the person from physical, psychological, or social injury resulting from the project.

(20 U.S.C. 1221e–3(a)(1))

Cross-reference.—See 45 CFR Part 46—Protection of Human Research Subjects.

§ 100a.682 Treatment of animals.

If a grantee uses an animal in a project, the grantee shall provide the animal with proper care and humane treatment in accordance with the Animal Welfare Act of 1970.

(Pub. L. 89–544, as amended)

§ 100a.683 Health or safety standards for facilities.

A grantee shall comply with any Federal health or safety requirements that apply to the facilities that the grantee uses for the project.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.684 Day care services.

(a) If a grantee uses program funds to provide day care services, the grantee shall comply with the requirements in 45 CFR Part 71.

(b) The appropriate official of the Education Division may waive this requirement by publication of a notice in the **Federal Register.**

(20 U.S.C. 1221e–3(a)(1))

Subpart F—What Are the Administrative Responsibilities of a Grantee?

General Administrative Responsibilities

§ 100a.700 Compliance with statutes, regulations, and applications.

A grantee shall comply with applicable statutes, regulations, and approved applications, and shall use Federal funds in accordance with those statutes, regulations, and applications.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.701 The grantee administers or supervises the project.

A grantee shall directly administer or supervise the administration of the project.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.702 Fiscal control and fund accounting procedures.

A grantee shall use fiscal control and fund accounting procedures that insure proper disbursement of and accounting for Federal funds.

(20 U.S.C. 1221e–3(a)(1))

Cross-reference.—See 45 CFR Part 74, Subpart B—Cash Depositories, Subpart H—Standards for Grantee and Subgrantee Financial Management Systems, and Subpart K—Grant and Subgrant Payment Requirements.

§ 100a.703 Obligation of funds during the grant period.

A grantee may use grant funds only for obligations it makes during the grant period.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.707 When obligations are made.

The following table shows when a grantee makes obligations for various kinds of property and services.

If the obligation is for—	The obligation is made—
(a) Acquisition of real or personal property.	On the date the grantee makes a binding written commitment to acquire the property.
(b) Personal services by an employee of the grantee.	When the services are performed.
(c) Personnal services by a contractor who is not an employee of the grantee.	On the date on which the grantee makes a binding written commitment to obtain the services.
(d) Performance of work other than personal services.	On the date on which the grantee makes a binding written commitment to obtain the work.
(e) Public utility services	When the grantee receives the services.
(f) Travel	When the travel is taken.
(g) Rental of real or personal property.	When the grantee uses the property.
(h) A preagreement cost that was properly approved by the appropriate official of the Education Division under the cost principles in appendices C-F to 45 CFR Part 74.	On the first day of the grant period.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.708 Prohibition of subgrants.

(a) A grantee may not make a subgrant under a program listed in § 100a.1 unless specifically authorized by statute.

(b) A grantee may contract for supplies, equipment, construction, and other services, in accordance with 45 CFR Part 74, Subpart P—Procurement Standards.

(20 U.S.C. 1221e-3(a)(1))

Reports

Cross-reference.—See 45 CFR Part 74, Subpart I—Financial Reporting Requirements, and Subpart J—Monitoring and Reporting of Program Performance.

§ 100a.720 Financial and performance reports.

(a) This section applies to the reports required under 45 CFR Part 74, Subpart I (financial reporting) and Subpart J (performance reporting).

(b) A grantee shall submit these reports annually, unless the appropriate official of the Education Division allows less frequent reporting. However, the Director of the National Institute of Education may require a grantee to submit performance reports more often than annually.

(c) The appropriate official of the Education Division may, under 45 CFR 74.7 (Special grant or subgrant conditions) or 45 CFR 74.72(e) (Grantee accounting systems), require a grantee to report more frequently than annually.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.721 Reports under the Joint Funding Simplification Act.

(a) The appropriate official of the Education Division determines the frequency and scope of reports necessary to assure proper monitoring of a grant under the Joint Funding Simplification Act.

(b) The appropriate official makes this determination in cooperation with any other Federal or State agencies that are also funding the grant.

(42 U.S.C. 4252(a))

Records

Cross-reference.—See 45 CFR Part 74, Subpart D—Retention and Access Requirements for Records.

§ 100a.730 Records related to grant funds.

A grantee shall keep records that fully show—

(a) The amount of funds under the grant;

(b) How the grantee uses the funds;

(c) The total cost of the project;

(d) The share of that cost provided from other sources; and

(e) Other records to facilitate an effective audit.

(20 U.S.C. 1232f)

§ 100a.731 Records related to compliance.

A grantee shall keep records to show its compliance with program requirements.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.732 Records related to performance.

(a) A grantee shall keep records of significant project experiences and results.

(b) The grantee shall use the records under paragraph (a) to—

(1) Determine progress in accomplishing project objectives; and

(2) Revise those objectives, if necessary.

(20 U.S.C. 1221e-3(a)(1))

Cross-reference.—See 45 CFR 74.103 (b) and (c)—Procedures for revising objectives.

§ 100a.733 Records related to State approval applications.

(a) This section applies to programs that require State approval of applications.

(b) The State shall keep a complete case file on each application it receives.

(c) The State shall keep a full record of—

(1) Any hearing related to an application; and

(2) Any proceeding by which the State establishes relative priorities or recommends Federal shares for eligible projects.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.734 Record retention period.

Unless a longer period is required under 45 CFR Part 74, a grantee shall retain records for five years after the completion of the activity for which it uses grant funds.

Cross-reference.—See 45 CFR Part 74.21—Length of retention period; and 74.22 Starting date of retention period.

(20 U.S.C. 1232f(a))

Privacy

§ 100a.740 Protection of and access to student records.

Most records on present or past students are subject to the requirements of Section 438 of GEPA and its implementing regulations in 45 CFR Part 99. (Section 438 is the Family Educational Rights and Privacy Act of 1974.)

(20 U.S.C. 1231(g))

§ 100a.741 Protection of students' privacy in research and testing.

(a) If a project funded by the Office of Education is designed to explore or develop new or unproven teaching methods or techniques, the grantee must give parents or guardians of children who participate in the project access to instructional material that will be used in connection with the project, including teacher's manuals, films, tapes, or other supplementary instructional material.

(b) No student may be required, as part of any program of the Education Division, to submit to psychiatric examination, testing, or treatment, or psychological examination, testing, or treatment, in which the primary purpose is to reveal information concerning any of the following:

(1) Political affiliations.

(2) Mental and psychological problems potentially embarrassing to the student or his family.

(3) Sex behavior and attitudes.

(4) Illegal, anti-social, self-incriminating and demeaning behavior.

(5) Critical appraisals of other individuals with whom respondents have close family relationships.

(6) Legally recognized privileged and analogous relationships, such as those of lawyers, physicians, and ministers.

(7) Income—other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under the program—without the prior consent of the student (if the student is an adult or emancipated minor) or, in the case of unemancipated minor, without the prior written consent of the parent.

(20 U.S.C. 1232h)

Data Collection by a Grantee

§ 100a.750 Approval of data collection instruments.

(a) The Education Division is the sponsor of the data collection activity of a grantee in any of the following circumstances:

(1) The grantee represents to respondents that the data is being collected for or in association with the Education Division. This does not include acknowledgment of the assistance the grantee received under the grant.

(2) The grantee uses the data collection instrument to collect data that the Education Division has requested for the planning, operation, or evaluation of an Education Division Federal program.

(3) The grant provides for Education Division approval of the survey design, content of the instrument, or data collection procedures.

(4) The grant provides for—

(i) The grantee to submit data on individual respondents; or

(ii) The grantee to prepare and submit tabulations of the data requested by the Education Division.

(b) If the Education Divison sponsors a data collection activity of a grantee, the data collection instruments to be used by the grantee are subject to review under either—

(1) The paperwork control requirements of Section 400A of GEPA (the Federal Education Data Acquisition Council (FEDAC) procedurds); or

(2) The requirements under OMB Circular A–40.

(c) The FEDAC procedures apply to a data collection activity sponsored by the Education Division if—

(1) The respondents are primarily educational agencies or institutions; and

(2) The purpose of the activity is to get information needed for—

(i) The management of Federal educational programs;

(ii) The development of policy related to those programs; or

(iii) Research or evaluation studies related to the implementation of those programs.

(20 U.S.C. 1221–3; 1221e–3(a)(1))

Cross-reference.—See the FEDAC procedures published in the **Federal Register** on August 8, 1979 (44 FR 46535).

§ 100a.751 Procedures if approval is required.

If approval of a data collection instrument is required under the FEDAC procedures or under OMB Circular A–40, the grantee shall submit an original and four copies of each of the following to the appropriate official of the Education Division:

(a) The proposed data collection instrument.

(b) A completed OMB Standard Form 83.

(c) The supporting statement required in the "Instructions for Requesting OMB Approval under the Federal Reports Act," as described in standard form 83A.

(d) Supplementary information required by FEDAC under the procedures published in the **Federal Register** on August 8, 1979 (44 FR 46535).

(20 U.S.C. 1221–3; 1221e–3(a)(1))

§ 100a.752 Responsibility for data collection.

Unless FEDAC or the OMB approves a data collection instrument, the grantee may not in any way represent or imply that the data is being collected by or for the Federal Government. This does not preclude the grantee from acknowledging the assistance it received under the grant.

(20 U.S.C. 1221e–3(a)(1))

§100a.753 Confidentiality of response.

In using data collection instruments, a grantee shall provide for anonymity and confidentiality of responses from individuals.

(20 U.S.C. 1221–3; 1221e–3(a)(1))

§ 100a.754 Exemption from coverage.

The regulations in §§ 100a.750–100a.753 do not apply to data collection instruments that are solely—

(a) Tests or examinations to determine knowledge, ability, or aptitude of individuals; or

(b) Instruments to collect data for identification or classification in connection with those tests or examinations.

(20 U.S.C. 1221–3; 1221e–3(a)(1))

§ 100a.755 Definitions used in §§ 100a.750–100a.754.

As used in §§ 100a.750–100a.754—

"Data collection instrument" means a report form, application form, schedule, questionnaire, or similar instrument for getting answers to identical questions from ten or more respondents.

"Respondent" is an individual or organization from whom a grantee collects information either directly or indirectly.

(20 U.S.C. 1221e–3(a)(1))

Subpart G—What Procedures Does the Education Division Use To Get Compliance?

Cross-reference.—See 45 CFR Part 74, Subpart M—Grant and Subgrant Closeout, Suspension, and Termination.

§ 100a.900 Waiver of regulations prohibited.

(a) No official, agent, or employee of HEW may waive any regulation that applies to an Education Division program, unless the regulation specifically provides that it may be waived.

(b) No act or failure to act by an official, agent, or employee of HEW can affect the authority of the appropriate official of the Education Division to enforce regulations.

(43 Dec. Comp. Gen. 31 (1963))

§ 100a.901 Suspension and termination.

(a) The appropriate official of the Education Division uses the Departmental Grant Appeals Board to resolve disputes within the jurisdiction of that board. The regulations governing the Department Grant Appeals Board are in 45 CFR Part 16.

Cross-reference.—See 45 CFR 16.5 Jurisdiction of the board.

(b) The Commissioner may use the Education Appeal Board to resolve disputes that are not within the jurisdiction of the Departmental Grant Appeals Board. (See 45 CFR Part 100d—Education Appeal Board.)

(c) The following sections in 45 CFR Part 74 apply to suspension and termination of a grant made by the Office of the Assistant Secretary for Education, the National Institute of Education, or the Institute of Museum Services:

(1) Section 74.113 (Violation of terms).

(2) Section 74.114 (Suspension).

(3) Section 74.115 (Termination).

(4) The last sentence of § 74.73(c) (Financial reporting after a termination).

(5) Section 74.112 (Amounts payable to the Federal Government).

(20 U.S.C. 1221e–3(a)(1))

§ 100a.902 Informal procedures.

Athough either the appropriate official of the Education Division or a grantee may request an informal meeting regarding a proposed termination, the grantee is considered, for purposes of 45 CFR 16.5(b)(2), to have exhausted Education Division informal procedures

when the grantee receives the notice of termination.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.903 Effective date of termination.

Termination is effective on the latest of—

(a) The date of delivery to the grantee of the notice of termination;

(b) The termination date given in the notice of termination; or

(c)(1) For a grant made by the Office of Education, the date of a final decision of the Commissioner under 45 CFR Part 100d; or

(2) For a grant made by the Office of the Assistant Secretary for Education, the National Institute of Education, or the Institute of Museum Services, the date of a final decision by the Departmental Grant Appeals Board under 45 CFR Part 16.

(20 U.S.C. 1221e-3(a)(1))

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Authority.—Section 408(a)(1) of Pub. L. 90-247, 88 Stat. 559, 560, as amended (20 U.S.C. 1221e-3(a)(1)), unless otherwise noted.

Subpart A—General

Regulations That Apply to State-Administered Programs

§ 100b.1 Programs to which Part 100b applies.

The regulations in Part 100b apply to the programs of the Office of Education that are listed in the following table. In addition to the name of the program, the table gives the statute that authorizes the program, the regulations that implement the program, and the number that the Catalog of Federal Domestic Assistance (CFDA) gives to the program.

(20 U.S.C. 1221e-3(a)(1))

Note.—Some programs are not currently funded. Check with the State agency responsible for administering the program.

Name of program	Authorizing statute	Implementing regulations (45 CFR)	CFDA No.
2A. Elementary and Secondary Education Programs			
Financial Assistance to Local Educational Agencies To Meet the Special Educational Needs of Educationally Deprived Children (except Coordination of Migrant Education and Transition of Neglected or Delinquent Children—See 45 CFR Part 100a)..	Title I-A of the Elementary and Secondary Education Act (except Sections 143 and 153) (20 U.S.C. 2701-2754).	Parts 116 and 116a	13.428 and 13.512.
Grants to State Agencies for Programs To Meet the Special Educational Needs of Children in Institutions for Neglected or Delinquent Children.	Sections 151-153 of the Elementary and Secondary Education Act (20 U.S.C. 2781-2783).	Parts 116 and 116c	13.428 and 13.431.
Grants to State Educational Agencies for Programs To Meet the Special Educational Needs of Migratory Children.	Section 141-143 of the Elementary and Secondary Education Act (20 U.S.C. 2761-2763).	Parts 116 and 116d	13.428 and 13.429.
State Basic Skills Program	Title II-B of the Elementary and Secondary Education Act (20 U.S.C. 2901-2904).	Part 162	13.599.
Financial Assistance for School Library Resources, Textbooks and Other Instructional Materials.	Title II of the Elementary and Secondary Education Act (as in effect Sept. 30, 1978).	See 43 FR 57253 (December 7, 1978)	None.
Supplementary Centers and Services, Guidance, Counseling, and Testing Programs.	Title III of the Elementary and Secondary Education Act (as in effect Sept. 30, 1978).	See 43 FR 57253 (December 7, 1978)	None.
Educational Improvement, Resources, and Support	Title IV of the Elementary and Secondary Education Act (20 U.S.C. 1801-1832).	Part 134	13.570, 13.571, and 13.——.
Strengthening State Educational Agency Management	Title V-B of the Elementary and Secondary Education Act (20 U.S.C. 3161-3163).	None	None.
Federal Financial Assistance for Strengthening State Departments of Education—Basic Grants.	Title V-A (except Section 505—See 45 CFR Part 100a) of the Elementary and Secondary Education Act (as in effect Sept. 30, 1978).	See 43 FR 57253 (December 7, 1978)	13.486.
Community Schools Program	Title VIII of the Elementary and Secondary Education Act (except Sections 809-813—See 100a) (20 U.S.C. 3281-3288).	Part 160b, Subpart B	None.
Gifted and Talented Children Program	Title IX of the Elementary and Secondary Education Act (except section 905—See 45 CFR Part 100a) (20 U.S.C. 3311-3314; 3316-3318).	Part 195	13.562.
Strengthening Instruction in Academic Subjects in Public Schools.	Title III-A of the National Defense Education Act of 1958 (20 U.S.C. 441-444).	See 43 FR 57254 (December 7, 1978)	None.
B. Education of the Handicapped Programs			
State-operated Programs for Handicapped Children	Sections 146-147 of the Elementary and Secondary Education Act (20 U.S.C. 2771-2772).	Parts 116 and 116b	13.428 and 13.427.
Assistance to States for Education of Handicapped Children..	Part B of the Education of the Handicapped Act (20 U.S.C. 1411-1418; 1420).	Part 121a	13.449.
Incentive Grants	Section 619 of the Education of the Handicapped Act (20 U.S.C. 1419).	Part 121m	13.449.
C. Occupational and Adult Education Programs			
State Vocational Education Programs	Part A of Title I of the Vocational Education Act (20 U.S.C. 2301-2461).	Part 104	13.493, 13.494, 13.495, 13.499, and 13.500.
Career Education—State Allotment Program	Career Education Incentive Act (except Sections 10, 11, and 12—See 45 CFR Part 100a) (20 U.S.C. 1201-2614).	Part 161	None.
State Adult Education Programs	Adult Education Act (except Sections 309, 314, 317, and 318—See 45 CFR Part 100a), (20 U.S.C. 1201-1211a).	Part 166	13.400.
D. Higher Education Programs			
Community Service and Continuing Education Programs (except Special Programs and Projects—See 45 CFR Part 100a).	Title I of the Higher Education Act (except Section 106) (20 U.S.C. 1001-1005; 1006-1011).	Part 173 (except Subpart C)	13.491.

Name of program	Authorizing statute	Implementing regulations (45 CFR)	CFDA No.
State Student Incentive Grant Program	Sections 415A–415E of the Higher Education Act (20 U.S.C. 1070c through 1070c–4).	Part 192	13.548.
Educational Information Centers Program	Sections 418A and 418B of the Higher Education Act (20 U.S.C. 1070d–2 and 1070d–3).	Part 137	13.585.
Incentive Grants for State Student Financial Assistance Training Program.	Section 493C of the Higher Education Act (20 U.S.C. 1088b–3).	Part 178a	13.582.
State Postsecondary Education Commissions Program—Intrastate Planning.	Section 1203(a) of the Higher Education Act (20 U.S.C. 1142b(a)).	Part 199a	13.550.
E. Other Programs			
Library Services, Public Library Construction and Interlibrary Cooperation.	Library Services and Construction Act (20 U.S.C. 351–355e–2).	Part 130	13.464, 13.408, and 13.465.
Assistance to States for State Equalization Plans	Section 842 of the Education Amendments of 1974 (20 U.S.C. 246).	None	13.572.

§100b.2 Exceptions in program regulations to Part 100b.

If a program has regulations that are not consistent with Part 100b, the implementing regulations for that program identify the sections of Part 100b that do not apply.

(20 U.S.C. 1221e–3(a)(1))

§100b.3 HEW general grant regulations apply to these programs.

The HEW general grant regulations in 45 CFR Part 74 apply to the programs covered by this part. To find subjects covered under 45 CFR Part 74, look in the table of contents at the beginning of 45 CFR Part 74.

(20 U.S.C. 1221e–3(a)(1))

Eligibility for a Grant or Subgrant

§ 100b.50 Statutes determine eligibility and whether subgrants are made.

(a) Under a program listed in § 100b.1, the Commissioner makes a grant—

(1) To the State agency designated by the authorizing statute for the program; or

(2) To the State agency designated by the State in accordance with the authorizing statute.

(b) The authorizing statute determines the extent to which a State may—

(1) Use grant funds directly; and

(2) Make subgrants to eligible applicants.

(c) The regulations in Part 100b on subgrants apply to a program only if subgrants are authorized under that program.

(d) The authorizing statute determines the eligibility of an applicant for a subgrant.

(20 U.S.C. 1221e–3(a)(1))

Cross-reference.—See 45 CFR Part 74, Subpart E—Waiver of Single State Agency Requirements.

§ 100b.51 A State distributes funds by formula or competition.

If a program statute authorizes a State to make subgrants, the statute—

(a) Requires the State to use a formula to distribute funds;

(b) Gives the State discretion to select subgrantees through a competition among the applicants or through some other procedure; or

(c) Allows some combination of these procedures.

(20 U.S.C. 1221e–3(a)(1))

Subpart B—How a State Applies for a Grant

State Plans and Applications

§ 100b.100 Effect of this subpart

This subpart establishes general requirements that a State must meet to apply for a grant under a program listed in § 100b.1. Additional requirements are in the authorizing statute and the implementing regulations for the program.

(20 U.S.C. 1221e–3(a)(1))

§ 100b.101 The general State application

(a) This section applies to the programs listed in § 100b.1 under which a State educational agency may make subgrants to local educational agencies.

(b)(1) A State shall submit to the Commissioner a general application that contains the assurances contained in paragraph (e) of this section.

(2) The State may submit—

(i) A single general application to cover all of the programs; or

(ii) More than one general application, each general application covering either a group of programs or an individual program.

(c) A general application must be approved by each official, agency, board, or other entity within the State that, under State law, is primarily responsible for supervision of the activities conducted under each program covered by the application.

(d) Each general application submitted under this section remains in effect for the duration of any program it covers. The Commissioner does not require the resubmission or amendment of that application unless required by changes in Federal or State law or by other significant changes in the circumstances affecting an assurance in that application.

(e) A general application must include assurances, satisfactory to the Commissioner—

(1) That each program will be administered in accordance with all applicable statutes, regulations, State plans, and applicaitons;

(2) That the control of funds provided under each program and title to property acquired with program funds will be in a public agency, or in a nonprofit private agency, institution, or organization if the statute authorizing the program provides for grants to those entities, and that the public agency or nonprofit private

agency, institution, or organization will administer the funds and property;

(3) That the State will adopt and use proper methods of administering each program, including—

(i) Monitoring of agencies, institutions, and organizations responsible for carrying out each program, and the enforcement of any obligations imposed on those agencies, institutions, and organizations under law;

(ii) Providing technical assistance, if necessary, to those agencies, institutions, and organizations;

(iii) Encouraging the adoption of promising or innovative educational techniques by those agencies, institutions, and organizations;

(iv) The dissemination throughout the State of information on program requirements and sucessful practices; and

(v) The correction of deficiencies in program operations that are identified through monitoring or evaluation;

(4) That the State will evaluate the effectiveness of each program in meeting statutory objectives—not less often than once every three years—and that the State will cooperate in carrying out any evaluation of a program conducted by or for the Secretary or other Federal official;

(5) That the State will use fiscal control and fund accounting procedures that will ensure proper disbursement of, and accounting for, Federal funds paid to the State under each program;

(6) That the State will—

(i) Make reports to the Commissioner—including reports on the results of evaluations required under paragraph (e)(4) of this section—as may reasonably be necessary to enable the Commissioner to perform his or her duties under each program; and

(ii) Maintain records, in accordance with the requirements of Section 437 of GEPA—and afford access to those records as the Commissioner may find necessary to carry out his or her duties; and

(7) That the State will provide reasonable opportunities for the participation by local agencies, representatives of the class of individuals affected by each program, and other interested institutions, organizations, and individuals in the planning for and operation of each program, including the following:

(i) The State will consult with relevant advisory committees, local agencies, interest groups, and experienced professionals in the development of State plans.

(ii) The State will publish each proposed State plan, in a manner that will ensure circulation throughout the State, at least 60 days prior to the date on which the plan is submitted to the Commissioner or on which the plan becomes effective, whichever occurs earlier, with an opportunity for public comments on the plan to be accepted for at least 30 days.

(iii) The State will hold public hearings on the proposed State plans if required by the Commissioner by regulation.

(iv) The State will provide an opportunity for interested agencies, organizations, and individuals to suggest improvements in the administration of the program and to allege that there has been a failure by any entity to comply with applicable statutes and regulations.

(20 U.S.C. 1232d)

Note.—The Commissioner interprets Section 435 of GEPA—implemented in this section—not to apply to State Vocational Education Programs. (See § 100b.1) This interpretation is based on the legislative history of both GEPA and the Vocational Education Act.

§ 100b.102 Definition of "State plan" for Part 100b.

As used in this part, "State plan" means any of the following documents that a State submits to the Commissioner under a program listed in § 100b.1:

(a) *Compensatory education.* The application under Section 162 of Title I of the Elementary and Secondary Education Act.

(b) *Migrant children.* The application under Sections 141–143 of the Elementary and Secondary Education Act.

(c) *Basic skills.* The agreement under Title II–B of the Elementary and Secondary Education Act.

(d) *Library resources.* The State plan under Title II of the Elementary and Secondary Education Act (as in effect on Sept. 30, 1978).

(e) *Innovative projects; Guidance and Counseling.* The State plan under Title III of the Elementary and Secondary Education Act (as in effect on Sept. 30, 1978).

(f) *Educational Improvement, Resources, and Support.* The State plan under Title IV of the Elementary and Secondary Education Act.

(g) *State educational agencies.* The State plan under Title V–B of the Elementary and Secondary Education Act.

(h) *State educational agencies.* The application under Title V–A of the Elementary and Secondary Education Act (as in effect September 30, 1978).

(i) *Community schools.* The State plan under Title VIII of the Elementary and Secondary Education Act.

(j) *Gifted and talented children.* The application under Section 904(b)(1) of Title IX of the Elementary and Secondary Education Act.

(k) *Academic subjects.* The State plan under Title III–A of the National Defense Education Act.

(l) *Handicapped children.* The State plan under Part B of the Education of the Handicapped Act.

(m) *Handicapped children.* The application under Section 619 of the Education of the Handicapped Act.

(n) *Vocational education.* The annual program plan and the annual accountability report under Part A of Title I of the Vocational Education Act.

(o) *Career education.* The State plan under Section 7 of the Career Education Incentive Act.

(p) *Adult education.* The State plan under the Adult Education Act.

(q) *Community services.* The State plan under Title I of the Higher Education Act.

(r) *State student incentive grants.* The application under Section 415C of the Higher Education Act.

(s) *Educational information centers.* The State plan under Section 418B of the Higher Education Act.

(t) *Incentive grants for State student financial asistance training.* The application under Section 493C of the Higher Education Act.

(u) *Postsecondary commissions.* The application for intrastate planning under Section 1203(a) of the Higher Education Act.

(v) *Libraries.* The basic State plan and the annual programs under the Library Services and Construction Act.

(w) *State equalization.* The application under Section 842 of the Education Amendments of 1974.

(20 U.S.C. 1221e–3(a)(1))

§ 100b.103 Three-year State plans.

(a) Beginning no later than fiscal year 1981, each State plan will be effective for a period of three fiscal years, unless the program regulations provide for a longer effective period.

(b) If the Commissioner determines that the three-year State plans under a program should be submitted by the States on a staggered schedule, the Commissioner may require groups of States to submit or resubmit their plans in different years.

(c) This section does not apply to—

(1) The annual accountability report under Part A of Title I of the Vocational Education Act;

(2) The annual programs under the Library Services and Construction Act; and

(3) The application under Sections 141–143 of the Elementary and Secondary Education Act.

(d) A State may submit an annual State plan under the Vocational Education Act. If a State submits an annual plan under that program, this section does not apply to that plan.

(20 U.S.C. 1231g(a))

§ 100b.104 A State shall include certain certifications in its State plan.

(a) A State shall include the following certifications in each State plan:

(1) That the plan is submitted by the State agency that is eligible to submit the plan.

(2) That the State agency has authority under State law to perform the functions of the State under the program.

(3) That the State legally may carry out each provision of the plan.

(4) That all provisions of the plan are consistent with State law.

(5) That a State officer, specified by title in the certification, has authority under State law to receive, hold, and disburse Federal funds made available under the plan.

(6) That the State officer who submits the plan, specified by title in the certification, has authority to submit the plan.

(7) That the agency that submits the plan has adopted or otherwise formally approved the plan.

(8) That the plan is the basis for State operation and administration of the program.

(20 U.S.C. 1221e–3(a)(1))

§ 100b.105 The Governor has 45 days to comment on the State plan.

(a) Before a State submits a State plan to the Commissioner, the State shall give its Governor 45 days to comment on the plan.

(b) The State shall attach to the plan any comments the Governor makes.

(c) If the Governor does not comment, the offical who submits the State plan shall certify that—

(1) The State submitted the plan to the Governor at least 45 days before submitting it to the Commissioner; and

(2) The Governor did not comment.

(20 U.S.C. 1221e–3(a)(1))

§ 100b.106 State documents are public information.

A State shall make the following documents available for public inspection:

(a) All State plans and related official materials.

(b) All approved subgrant applications.

(c) All documents that the Commissioner transmits to the State regarding a program.

(20 U.S.C. 1221e–3(a)(1))

Amendments

Cross-reference.—See 45 CFR Part 74, Subpart L—Programmatic Changes and Budget Revisions.

§ 100b.140 Amendments to a State plan.

(a) If the Commissioner determines that an amendment to a State plan is essential during the effective period of the plan, the State shall make the amendment.

(b) A State shall also amend a State plan if there is a significant and relevant change in—

(1) The information or the assurances in the plan;

(2) The administration or operation of the plan; or

(3) The organization, policies, or operations of the State agency that received the grant, if the change materially affects the information or assurances in the plan.

(20 U.S.C. 1221e–3(a)(1); 1231g(a))

§ 100b.141 An amendment requires the same procedures as the document being amended.

If a State amends a State plan under § 100b.140, the State shall use the same procedures as those it must use to prepare and submit a State plan.

(20 U.S.C. 1221e–3(a)(1))

§ 100b.142 An amendment is approved on the same basis as the document being amended.

The Commissioner uses the same procedures to approve an amendment to a State plan—or any other document a State submits—as the Commissioner uses to approve the original document.

(20 U.S.C. 1221e–3(a)(1))

Subpart C—How a Grant Is Made to a State

Approval or Disapproval by the Commissioner

§ 100b.201 A State plan must meet all statutory and regulatory requirements.

The Commissioner approves a State plan if it meets the requirements of the Federal statutes and regulations that apply to the plan.

(20 U.S.C. 1221e–3(a)(1))

§ 100b.202 Opportunity for a hearing before a State plan is disapproved.

The Commissioner may disapprove a State plan only after—

(a) Notifying the State;

(b) Offering the State a reasonable opportunity for a hearing; and

(c) Holding the hearing, if requested by the State.

(20 U.S.C. 1221e–3(a)(1))

§ 100b.235 The notification of grant award.

(a) To make a grant to a State, the Commissioner issues and sends to the State a notification of grant award.

(b) The notification of grant award tells the amount of the grant and provides other information about the grant.

(20 U.S.C. 1221e–3(a)(1))

Allotments and Reallotments of Grant Funds

§ 100b.260 Allotments are made under program statute.

(a) The Commissioner allots program funds to a State in accordance with the authorizing statute for the program.

(b) Any reallotment to other States will be made by the Commissioner in accordance with the authorizing statute for that program.

(20 U.S.C. 1221e–3(a)(1))

§ 100b.261 Reallotted funds are part of a State's grant.

Funds that a State receives as a result of a reallotment are part of the State's grant for the appropriate fiscal year. However, the Commissioner does not consider a reallotment in determining the maximum or minimum amount to which a State is entitled for a following fiscal year.

(20 U.S.C. 1221e–3(a)(1))

Subpart D—How To Apply to the State for a Subgrant

§ 100b.300 Contact the State for procedures to follow.

An applicant for a subgrant can find out the procedures it must follow by contacting the State agency that administers the program.

(20 U.S.C. 1221e–3(a)(1))

Cross-reference.—See Subparts E and G of this part for the general responsibilities of the State regarding applications for subgrants.

§ 100b.301 Local educational agency general application.

(a) A local educational agency that applies for subgrants under one or more programs listed in § 100b.1 shall submit to the State a general application that contains the assurances contained in paragraph (c) of this section. That application covers the participation by that local educational agency in all of those programs.

(b) A general application submitted under this section remains in effect for the duration of the programs it covers.

The State agencies or boards administering the programs covered by the application may not require the resubmission or amendment of the application unless required by a change in Federal or State law or by other significant changes in the circumstances affecting an assurance in the application.

(c) The general application submitted by a local educational agency must include assurances—

(1) That the local educational agency will administer each program covered by the application in accordance with all applicable statutes, regulations, program plans, and applications;

(2) That the control of funds provided to the local educational agency under each program and title to property acquired with those funds will be in a public agency and that a public agency will administer those funds and property;

(3) That the local educational agency will use fiscal control and fund accounting procedures that will ensure proper disbursement of, and accounting for, Federal funds paid to that agency under each program;

(4) That the local educational agency will—

(i) Make reports to the State agency or board and to the Commissioner as may reasonably be necessary to enable the State agency or board and the Commissioner to perform their duties;

(ii) Maintain records—including the records required under Section 437 of GEPA—and provide access to those records as the State agency or board or the Commissioner decides are necessary to perform their duties;

(5) That the local educational agency will provide reasonable opportunities for the participation by teachers, parents, and other interested agencies, organizations, and individuals in the planning for and operation of each program;

(6) That any application, evaluation, periodic program plan or report relating to each program will be made readily available to parents and other members of the general public;

(7) That in the case of any project involving construction—

(i) The project is not inconsistent with overall State plans for the construction of school facilities; and

(ii) In developing plans for construction, due consideration will be given to excellence of architecture and design and to compliance with standards prescribed by the Secretary under Section 504 of the Rehabilitation Act of 1973 in order to ensure that facilities constructed with the use of Federal funds are accessible to and usable by handicapped individuals; and

(8) That the local educational agency has adopted effective procedures for—

(i) Acquiring and disseminating to teachers and administrators participating in each program, significant information from educational research, demonstrations, and similar projects; and

(ii) Adopting, if appropriate, promising educational practices developed through those projects.

(20 U.S.C. 1232e)

§ 100b.302 The notice to the subgrantee.

A State shall notify a subgrantee in writing of—

(a) The amount of the subgrant;

(b) The period during which the subgrantee may obligate the funds; and

(c) The Federal requirements that apply to the subgrant.

(20 U.S.C. 1221e–3(a)(1))

§ 100b.303 Joint applications and projects.

(a) Two or more eligible parties may submit a joint application for a subgrant.

(b) If the State must use a formula to distribute subgrant funds (see § 100b.51), the State may not make a subgrant that exceeds the sum of the entitlements of the separate subgrantees.

(c) If the State funds the application, each subgrantee shall—

(1) Carry out the activities that the subgrantee agreed to carry out; and

(2) Use the funds in accordance with Federal requirements.

(d) Each subgrantee shall use an accounting system that permits identification of the costs paid for under its subgrant.

(20 U.S.C. 1221e–3(a)(1))

§ 100b.304 Subgrantee shall make subgrant application available to the public.

A subgrantee shall make any application, evaluation, periodic program plan, or report relating to each program available for public inspection.

(20 U.S.C. 1221e–3(a)(1); 1232e)

§ 100b.305 Amendments to applications.

If a subgrantee makes a significant amendment to its application, the subgrantee shall use the same procedures as those it must use to submit an application.

(20 U.S.C. 1221e–3(a)(1))

Cross-reference.—See 45 CFR Part 74, Subpart L—Programmatic Changes and Budget Revisions.

Subpart E—How a Subgrant Is Made to an Applicant

§ 100b.400 State procedures for reviewing an application.

A State that receives an application for a subgrant shall take the following steps:

(a) *Review.* The State shall review the application.

(b) *Approval—entitlement programs.* The State shall approve an application if—

(1) The application is submitted by an applicant that is entitled to receive a subgrant under the program; and

(2) The applicant meets the requirements of the Federal statutes and regulations that apply to the program.

(c) *Approval—discretionary programs.* The State may approve an application if—

(1) The application is submitted by an eligible applicant under a program in which the State has the discretion to select subgrantees;

(2) The applicant meets the requirements of the Federal statutes and regulations that apply to the program; and

(3) The State determines that the project should be funded under the authorizing statute and implementing regulations for the program.

(d) *Disapproval—entitlement and discretionary programs.* If an application does not meet the requirements of the Federal statutes and regulations that apply to a program, the State shall not approve the application.

(20 U.S.C. 1221e–3(a)(1))

§ 100b.401 Disapproval of an application—opportunity for a hearing.

(a) *State agency hearing before disapproval.* Under the following programs listed in § 100b.1, the State agency that administers the program shall provide an applicant with notice and an opportunity for a hearing before it may disapprove the application:

(1) Financial Assistance to Local Educational Agencies to Meet the Special Educational Needs of Educationally Deprived Children.

(2) Grants to State Agencies for Programs To Meet the Special Educational Needs of Children in Institutions for Neglected or Delinquent Children.

(3) Supplementary Centers and Services, Guidance, Counseling, and Testing Programs.

(4) Strengthening Instruction in Academic Subjects in Public Schools.

(5) State-operated Programs for Handicapped Children.

(6) Assistance to States for Education of Handicapped Children.

(7) State Vocational Education Programs.

(b) *Other programs—hearings not required.* Under the other programs listed in § 100b.1, a State agency—other than a State educational agency—is not required to provide an opportunity for a hearing regarding the agency's disapproval of an application.

(c) If an applicant for a subgrant alleges that any of the following actions of a State educational agency violates a State or Federal statute or regulation, the State educational agency and the applicant shall use the procedures in paragraph (d) of this section:

(i) Disapproval of or failure to approve the application or project in whole or in part.

(ii) Failure to provide funds in amounts in accordance with the requirements of statutes and regulations.

(d) *State educational agency hearing procedures.*

(1) If the applicant applied under a program listed in paragraph (a) of this section, the State educational agency shall provide an opportunity for a hearing before the agency disapproves the application.

(2) If the applicant applied under a program not listed in paragraph (a) of this section, the State educational agency shall provide an opportunity for a hearing either before or after the agency disapproves the application.

(3) The applicant shall request the hearing within 30 days of the action of the State educational agency.

(4)(i) Within 30 days after it receives a request, the State educational agency shall hold a hearing on the record and shall review its action.

(ii) No later than 10 days after the hearing the agency shall issue its written ruling, including findings of fact and reasons for the ruling.

(iii) If the agency determines that its action was contrary to State or Federal statutes or regulations that govern the applicable program, the agency shall rescind its action.

(5) If the State educational agency does not rescind its final action after a review under this paragraph, the applicant may appeal to the Commissioner. The applicant shall file a notice of the appeal with the Commissioner within 20 days after the applicant has been notified by the State educational agency of the results of the agency's review. If supported by substantial evidence, findings of fact of the State educational agency are final.

(6)(i) The Commissioner may also issue interim orders to State educational agencies as he or she may decide are necessary and appropriate pending appeal or review.

(ii) If the Commissioner determines that the action of the State educational agency was contrary to Federal statutes or regulations that govern the applicable program, the Commissioner issues an order that requires the State educational agency to take appropriate action.

(7) Each State educational agency shall make available at reasonable times and places to each applicant all records of the agency pertaining to any review or appeal the applicant is conducting under this section, including records of other applicants.

(8) If a State educational agency does not comply with any provision of this section, or with any order of the Commissioner under this section, the Commissioner immediately terminates all assistance to the State educational agency under the applicable program.

(e) *Other State agency hearing procedures.* State agencies that are required to provide a hearing under paragraph (a) of this section—other than State educational agencies—are not required to use the procedures in paragraph (d) of this section.

(20 U.S.C. 1221e–3(a)(1); 1231b–2)

Subpart F—What Conditions Must Be Met by the State and Its Subgrantees?

Nondiscrimination

§ 100b.500 Federal statutes and regulations on nondiscrimination.

A State and a subgrantee shall comply with the following statutes and regulations:

Subject	Statute	Regulation
Discrimination on the basis of race, color, or national origin.	Title VI of the Civil Rights Act of 1964 (45 U.S.C. 2000d through 2000d–4).	45 CFR Part 80.
Discrimination on the basis of sex.	Title IX of the Education Amendments of 1972 (20 U.S.C. 1681–1683).	45 CFR Part 86.
Discrimination on the basis of handicap.	Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).	45 CFR Part 84.
Discrimination on the basis of age.	The Age Discrimination Act (42 U.S.C. 6101 *et seq.*).	45 CFR Part 90.

(20 U.S.C. 1221e–3(a)(1))

Allowable Costs

§ 100b.530 General cost principles.

Subpart Q of 45 CFR Part 74 references the general cost principles that apply to grants, subgrants, and cost-type contracts under grants and subgrants.

(20 U.S.C. 1221e–3(a)(1))

Cross-reference.—See 45 CFR Part 74, Subpart G—Matching or Cost Sharing.

§ 100b.532 Use of funds for religion prohibited.

(a) No State or subgrantee may use its grant or subgrant to pay for any of the following:

(1) Religious worship, instruction, or proselytization.

(2) Equipment or supplies to be used for any of the activities specified in paragraph (a)(1) of this section.

(3) Construction, remodeling, repair, operation, or maintenance of any facility or part of a facility to be used for any of the activities specified in paragraph (a)(1) of this section.

(4) An activity of a school or department of divinity.

(b) As used in this section, "school or department of divinity" means an institution or a component of an institution whose program is specifically for the education of students to—

(1) Prepare them to enter into a religious vocation; or

(2) Prepare them to teach theological subjects.

(20 U.S.C. 1221e–3(a)(1))

§ 100b.533 Acquistion of real property; construction.

No State or subgrantee may use its grant or subgrant for acquisition of real property or for construction unless specifically permitted by the authorizing statute or implementing regulations for the program.

(20 U.S.C. 1221e–3(a)(1))

§ 100b.534 Use of tuition and fees restricted.

No State or subgrantee may count tuition and fees collected from students toward meeting matching, cost sharing, or maintenance of effort requirements of a program.

(20 U.S.C. 1221e–3(a)(1))

Indirect Cost Rates

§ 100b.560 General indirect cost rates; exceptions.

(a) Appendices B–D to 45 CFR Part 74 include—

(1) A description of the difference between direct and indirect costs; and

(2) The principles for determining the general indirect cost rate that a State or subgrantee may use under some programs.

(b) Section 100b.562 provides restrictions on indirect cost rates under certain programs.

(20 U.S.C. 1221e–3(a)(1))

§ 100b.561 Approval of indirect cost rates.

(a) The Commissioner approves an indirect cost rate for a State agency and for a subgrantee other than a local educational agency. For the purposes of

this section, the term "local educational agency" does not include a State agency.

(b) Each State educational agency, on the basis of a plan approved by the Commissioner, shall approve an indirect cost rate for each local educational agency that requests it to do so.

(c) Each indirect cost rate must be approved annually.

(20 U.S.C. 1221e-3(a)(1))

§ 100b.563 Restricted indirect cost rate—programs covered.

A State and a subgrantee shall use a restricted indirect cost rate, computed under 45 CFR 100a.564–100a.568, for each program listed in § 100b.1 that has a statutory requirement not to use Federal funds to supplant non-Federal funds. These programs include the following:

Program	Authorizing statute
Financial Assistance to Local Educational Agencies To Meet the Special Educational Needs of Educationally Deprived Children.	Title I-A of the Elementary and Secondary Education Act.
Grants to State Agencies for Programs To Meet the Special Educational Needs of Children in Institutions for Neglected or Delinquent Children.	Sections 151–153 of the Elementary and Secondary Education Act.
Grants to State Agencies for Programs To Meet the Special Educational Needs of Migratory Children.	Sections 141–143 of the Elementary and Secondary Education Act.
State Basic Skills Improvement Program.	Title II of the Elementary and Secondary Education Act.
Financial Assistance for School Library Resources, Textbooks, and other Instructional Materials.	Title II of the Elementary and Secondary Education Act (as in effect Sept. 30, 1978).
Supplementary Centers and Services, Guidance, Counseling, and Testing Programs.	Title III of the Elementary and Secondary Education Act (as in effect Sept. 30, 1978).
Strengthening Instruction on Academic Subjects in Public Schools.	Title III-A of the National Defense Education Act.
State-operated Programs for Handicapped Children.	Sections 146–147 of the Elementary and Secondary Education Act.
Assistance to States for Education of Handicapped Children.	Part B of the Education of the Handicapped Act.
State Vocational Education Programs.	Part A of Title I of the Vocational Education Act.
Community Service and Continuing Education Programs.	Title I of the Higher Education Act.

(20 U.S.C. 1221e-3(a)(1))

Coordination

§ 100b.580 Coordination with other activities.

(a) A State and a subgrantee shall, to the extent possible, coordinate each of its projects with other activities that are in the same geographic area served by the project and that serve similar purposes and target groups.

(b) A State and a subgrantee whose project includes activities to improve the basic skills of children, youth, or adults shall, to the extent possible, coordinate its project with other basic skills activities that are in the same geographic area served by the project.

(c) For the purposes of this section, "basic skills" means reading, mathematics, and effective communication, both written and oral.

(d) The State or subgrantee shall continue its coordination during the period that it carries out the project.

(20 U.S.C. 1221e-3(a)(1); 2890)

§ 100b.581 Methods of coordination.

Depending on the objectives and requirements of a project, a grantee shall use one or more of the following methods of coordination:

(a) Planning the project with organizations and individuals who have similar objectives or concerns.

(b) Sharing information, facilities, staff, services, or other resources.

(c) Engaging in joint activities such as instruction, needs assessment evaluation, monitoring, technical assistance, or staff training.

(d) Using the grant or subgrant funds so as not to duplicate or counteract the effects of funds used under other programs.

(e) Using the grant or subgrant funds to increase the impact of funds made available under other programs.

(20 U.S.C. 1221e-3(a)(1))

Evaluation

§ 100b.591 Federal evaluation—cooperation by a grantee.

A State and a subgrantee shall cooperate in any evaluation of a program by the Secretary or the Commissioner.

(20 U.S.C. 1226c; 1231a)

§ 100b.592 Federal evaluation—satisfying requirement for State or subgrantee evaluation.

If a State or a subgrantee cooperates in a Federal evaluation of a program, the Commissioner may determine that the State or subgrantee meets the evaluation requirements of the program.

(20 U.S.C. 1226c; 1231a)

Construction

Cross-reference.—See 45 CFR Part 74, Subpart P—Procurement Standards.

§ 100b.600 Where to find construction regulations.

(a) A State or a subgrantee that requests program funds for construction, or whose grant or subgrant includes funds for construction, shall comply with the rules on construction that apply to applicants and grantees under 45 CFR 100a.600–100a.615.

(b) The State shall perform the functions that the appropriate official of the Education Division performs under 45 CFR 100a.602 (Preservation of historic sites) and 100a.605 (Approval of drawings and specifications).

(c) The State shall provide to the Commissioner the information required under 45 CFR 100a.602(a) (Preservation of historic sites).

(20 U.S.C. 1221e-3(a)(1))

Participation of Students Enrolled in Private Schools

§ 100b.650 Private schools; purpose of §§ 100b.651–100b.662.

(a) Under some programs, the authorizing statute requires that a State and its subgrantees provide for participation by students enrolled in private schools. Sections 100b.651–100b.662 apply to those programs and provide rules for that participation. These sections do not affect the authority of the State or a subgrantee to enter into a contract with a private party.

(b) If any other rules for participation of students enrolled in private schools apply under a particular program, they are in the authorizing statute or implementing regulations for that program.

(20 U.S.C. 1221e-3(a)(1)).

Note.—Some program statutes authorize the Commissioner—under certain circumstances—to provide benefits directly to private school students. These "bypass" provisions—where they apply—are implemented in the individual program regulations.

§ 100b.651 Responsibility of a State and a subgrantee.

(a)(1) A subgrantee shall provide students enrolled in private schools with a genuine opportunity for equitable participation in accordance with the requirements in §§ 100b.652–100b.662 and in the authorizing statute and implementing regulations for a program.

(2) The subgrantee shall provide that opportunity to participate in a manner that is consistent with the number of eligible private school students and their needs.

(3) The subgrantee shall maintain continuing administrative direction and control over funds and property that benefit students enrolled in private schools.

(b)(1) A State shall ensure that each subgrantee complies with the requirements in §§100b.651–100b.662.

(2) If a State carries out a project directly, it shall comply with these requirements as if it were a subgrantee.

(20 U.S.C. 1221e-3(a)(1))

§ 100b.652 Consultation with representatives of private school students.

(a) An applicant for a subgrant shall consult with appropriate representatives of students enrolled in private schools during all phases of the development and design of the project covered by the application, including consideration of—

(1) Which children will receive benefits under the project;

(2) How the children's needs will be identified;

(3) What benefits will be provided;

(4) How the benefits will be provided; and

(5) How the project will be evaluated.

(b) A subgrantee shall consult with appropriate representatives of students enrolled in private schools before the subgrantee makes any decision that affects the opportunities of those students to participate in the project.

(c) The applicant or subgrantee shall give the appropriate representatives a genuine opportunity to express their views regarding each matter subject to the consultation requirements in this section.

(20 U.S.C. 1221e–3(a)(1))

§ 100b.653 Needs, number of students, and types of services.

A subgrantee shall determine the following matters on a basis comparable to that used by the subgrantee in providing for participation of public school students:

(a) The needs of students enrolled in private schools.

(b) The number of those students who will participate in a project.

(c) The benefits that the subgrantee will provide under the program to those students.

(20 U.S.C. 1221e–3(a)(1))

§ 100b.654 Benefits for private school students.

(a) *Comparable benefits.* The program benefits that a subgrantee provides for students enrolled in private schools must be comparable in quality, scope, and opportunity for participation to the program benefits that the subgrantee provides for students enrolled in public schools.

(b) *Same Benefits.* If a subgrantee uses funds under a program for public school students in a particular attendance area, or grade or age level, the subgrantee shall insure equitable opportunities for participation by students enrolled in private schools who—

(1) Have the same needs as the public school students to be served; and

(2) Are in that group, attendance area, or age or grade level.

(c) *Different benefits.* If the needs of students enrolled in private schools are different from the needs of students enrolled in public schools, a subgrantee shall provide program benefits for the private school students that are different from the benefits the subgrantee provides for the public school students.

(20 U.S.C. 1221e–3(a)(1))

§ 100b.655 Level of expenditures for students enrolled in private schools.

(a) Subject to paragraph (b) of this section, a subgrantee shall spend the same average amount of program funds on—

(1) A student enrolled in a private school who receives benefits under the program; and

(2) A student enrolled in a public school who receives benefits under the program.

(b) The subgrantee shall spend a different average amount on program benefits for students enrolled in private schools if the average cost of meeting the needs of those students is different from the average cost of meeting the needs of students enrolled in public schools.

(20 U.S.C. 1221e–3(a)(1))

§ 100b.656 Information in an application for a subgrant.

An applicant for a subgrant shall include the following information in its application:

(a) A description of how the applicant will meet the Federal requirements for participation of students enrolled in private schools.

(b) The number of students enrolled in private schools who have been identified as eligible to benefits under the program.

(c) The number of students enrolled in private schools who will receive benefits under the program.

(d) The basis the applicant used to select the students.

(e) The manner and extent to which the applicant complied with § 100b.652 (consultation).

(f) The places and times that the students will receive benefits under the program.

(g) The differences, if any, between the program benefits the applicant will provide to public and private school students, and the reasons for the differences.

(20 U.S.C. 1221e–3(a)(1))

§ 100b.657 Separate classes prohibited.

A subgrantee may not use program funds for classes that are organized separately on the basis of school enrollment or religion of the students if—

(a) The classes are at the same site; and

(b) The classes include students enrolled in public schools and students enrolled in private schools.

(20 U.S.C. 1221e–3(a)(1))

§ 100b.658 Funds not to benefit a private school.

(a) A subgrantee may not use program funds to finance the existing level of instruction in a private school or to otherwise benefit the private school.

(b) The subgrantee shall use program funds to meet the specific needs of students enrolled in private schools, rather than—

(1) The needs of a private school; or

(2) The general needs of the students enrolled in a private school.

(20 U.S.C. 1221e–3(a)(1))

§ 100b.659 Use of public school personnel.

A subgrantee may use program funds to make public personnel available in other than public facilities—

(a) To the extent necessary to provide equitable program benefits designed for students enrolled in a private school; and

(b) If those benefits are not normally provided by the private school.

(20 U.S.C. 1221e–3(a)(1))

§ 100b.660 Use of private school personnel.

A subgrantee may use program funds to pay for the services of an employee of a private school if—

(a) The employee performs the services outside of his or her regular hours of duty; and

(b) The employee performs the services under public supervision and control.

(20 U.S.C. 1221e–3(a)(1))

§ 100b.661 Equipment and supplies.

(a) Under some program statutes, a public agency must keep title to and exercise continuing administrative control of all equipment and supplies that the subgrantee acquires with program funds. This public agency is usually the subgrantee.

(b) The subgrantee may place equipment and supplies in a private school for the period of time needed for the project.

(c) The subgrantee shall insure that the equipment or supplies placed in a private school—

(1) Are used only for the purposes of the project; and

(2) Can be removed from the private school without remodeling the private school facilities.

(d) The subgrantee shall remove equipment or supplies from a private school if—

(1) The equipment or supplies are no longer needed for the purposes of the project; or

(2) Removal is necessary to avoid use of the equipment of supplies for other than project purposes.

(20 U.S.C. 1221e–3(a)(1))

§ 100b.662 Construction.

A subgrantee shall insure that program funds are not used for the construction of private school facilities.

(20 U.S.C. 1221e–3(a)(1))

Other Requirements for Certain Programs

Cross-reference.—See 45 CFR Part 74, Subpart C—Bonding and Insurance; and 45 CFR 74.144—Inventions and patents.

§ 100b.681 Protection of human research subjects.

If a State or a subgrantee uses a human subject in a research project, the State or subgrantee shall protect the person from physical, psychological, or social injury resulting from the project.

(20 U.S.C. 1221e–3(a)(1))

Cross-reference.—See 45 CFR Part 46—Protection of Human Research Subjects.

§ 100b.682 Treatment of animals.

If a State or a subgrantee uses an animal in a project, the State or subgrantee shall provide the animal with proper care and humane treatment in accordance with the Animal Welfare Act of 1970.

(Pub. L. 89–544, as amended)

§ 100b.683 Health or safety standards for facilities.

A State and a subgrantee shall comply with any Federal health or safety requirements that apply to the facilities that the State or subgrantee uses for a project.

(20 U.S.C. 1221e–3(a)(1))

§ 100b.684 Day care services.

(a) If a State or a subgrantee uses program funds to provide any day care services, the State or subgrantee shall comply with the day care requirements in 45 CFR Part 71 of this title.

(b) The Commissioner may waive this requirement by publication of a notice in the Federal Register.

(20 U.S.C. 1221e–3(a)(1))

Subpart G—What Are the Administrative Responsibilities of the State and Its Subgrantees?

General Administrative Responsibilities

§ 100b.700 Compliance with statutes, regulations, State plan, and applications.

A State and a subgrantee shall comply with the State plan and applicable statutes, regulations, and approved applications, and shall use Federal funds in accordance with those statutes, regulations, plan, and applications.

(20 U.S.C. 1221e–3(a)(1))

§ 100b.701 The State or subgrantee administers or supervises each project.

A State or a subgrantee shall directly administer or supervise the administration of each project.

(20 U.S.C. 1221e–3(a)(1))

§ 100b.702 Fiscal control and fund accounting procedures.

A State and a subgrantee shall use fiscal control and fund accounting procedures that insure proper disbursement of and accounting for Federal funds.

(20 U.S.C. 1221e–3(a)(1))

Cross-reference.—See 45 CFR Part 74, Subpart B—Cash Depositories, Subpart H—Standards for Grantee and Subgrantee and Subgrantee Financial Management Systems, and Subpart K—Grant and Subgrant Payment Requirements.

§ 100b.703 When a State may begin to obligate funds.

(a) A State may not begin to obligate funds under a program until the later of the following two dates:

(1) The date that the State plan is mailed or hand delivered to the Commissioner in substantially approvable form.

(2) The date that the funds are first available for obligation by the Commissioner.

(b)(1) The State must show one of the following as proof of mailing:

(i) A legibly dated U.S. Postal Service postmark.

(ii) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(iii) A dated shipping label, invoice, or receipt from a commercial carrier.

(iv) Any other proof of mailing acceptable to the Commissioner.

(2) If a State plan is mailed through the U.S. Postal Service, the Commissioner does not accept either of the following as proof of mailing:

(i) A private metered postmark.

(ii) A mail receipt that is not dated by the U.S. Postal Service.

Note.—The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, a State should check with its local post office.

(c) After determining that a State plan is in substantially approvable form, the Commissioner informs the State of the date on which it could begin to obligate funds. Reimbursement for those obligations is subject to final approval of the State plan.

(20 U.S.C. 1221e–3(a)(1))

§ 100b.704 When certain subgrantees may begin to obligate funds.

(a) If the authorizing statute for a program requires a State to make subgrants on the basis of a formula (see § 100b.5), the State may not authorize an applicant for a subgrant to obligate funds until the later of the following two dates:

(1) The date that the State may begin to obligate funds under § 100b.703; or

(2) The date that the applicant submits its application to the State in substantially approvable form.

(b) Reimbursement for obligations under paragraph (a) of this section is subject to final approval of the application.

(c) If the authorizing statute for a program gives the State discretion to select subgrantees, the State may not authorize an applicant for a subgrant to obligate funds until the subgrant is made. However, the State may approve pre-agreement costs in accordance with the cost principles that are appended to 45 CFR Part 74 (Appendices C–F).

(20 U.S.C. 1221e–3(a)(1))

§ 100b.705 Funds may be obligated during a "carryover period."

(a) If a State or a subgrantee does not obligate all of its grant or subgrant funds by the end of the fiscal year for which Congress appropriated the funds, it may obligate the remaining funds during a carryover period of one additional fiscal year.

(b) The State shall return to the Federal Government any carryover funds not obligated by the end of the carryover period by the State and its subgrantees.

(U.S.C. 1225(b))

§ 100b.706 Obligations made during a carryover period are subject to current statutes, regulations, and applications.

A State and a subgrantee shall use carryover funds in accordance with—

(a) The Federal statutes and regulations that apply to the program and are in effect for the carryover period; and

(b) Any State plan, or application for a subgrant, that the State or subgrantee is required to submit for the carryover period.

(20 U.S.C. 1225(b))

§ 100b.707 When obligations are made.

The following table shows when a State or a subgrantee makes obligations for various kinds of property and services.

If the obligation is for—	*The obligation is made—*
(a) Acquisition of real or personal property,	On the date on which the State or subgrantee makes a binding written commitment to acquire the property.
(b) Personal services by an employee of the State or subgrantee,	When the services are performed.
(c) Personal services by a contractor who is not an employee of the State or subgrantee,	On the date on which the State or subgrantee makes a binding written commitment to obtain the services.
(d) Performance of work other than personal services,	On the date on which the State or subgrantee makes a binding written commitment to obtain the work.
(e) Public utility services,	When the State or subgrantee receives the services.
(f) Travel,	When the travel is taken.
(g) Rental of real or personal property,	When the State or subgrantee uses the property.
(h) A pre-agreement cost that was properly approved by the State under the cost principles in appendices C–F to 45 CFR Part 74,	On the first day of the subgrant period.

(20 U.S.C. 1221e–3(a)(1))

Reports

Cross-reference.—See 45 CFR Part 74, Subpart I—Financial Reporting Requirements, and Subpart J—Monitoring and Reporting of Program Performance.

§ 100b.720 Financial and performance reports by a State.

(a) This section applies to a State's reports required under 45 CFR Part 74, Subparts I (financial reporting) and J (performance reporting).

(b) A state shall submit these reports annually, unless the Commissioner allows less frequent reporting.

(c) However, the Commissioner may, under 45 CFR 74.7 (Special grant or subgrant conditions) or 45 CFR 74.72(e) (Grantee accounting systems), require a State to report more frequently than annually.

(20 U.S.C., 1221e–3(a)(1))

§ 100b.722 A subgrantee makes reports required by the State.

A State may require a subgrantee to furnish reports that the State needs to carry out its responsibilities under the program.

(20 U.S.C. 1221e–3(a)(1))

Records

Cross-reference.—See 45 CFR Part 74, Subpart D—Retention and Access Requirements for Records.

§ 100b.730 Records related to grant funds.

A State and a subgrantee shall keep records that fully show—

(a) The amount of funds under the grant or subgrant;

(b) How the State or subgrantee uses the funds;

(c) The total cost of the project;

(d) The share of that cost provided from other sources; and

(e) Other records to facilitate an effective audit.

(20 U.S.C. 1232f)

§ 100b.731 Records related to compliance.

A State and a subgrantee shall keep records to show its compliance with program requirements.

(20 U.S.C. 1221e–3(a)(1))

§ 100b.734 Record retention period.

Unless a longer period is required under 45 CFR Part 74, a State and a subgrantee shall retain records for five years after completion of the activity for which they use grant or subgrant funds.

(20 U.S.C. 1232f(a))

Cross-reference.—See 45 CFR 74.21 Length of retention period; and 74.22 Starting date of retention period.

Privacy

§ 100b.740 Protection of and accessibility to student records.

Most records on present or past students are subject to the requirements of Section 438 of GEPA and its implementing regulations under 45 CFR Part 99. (Section 438 is the Family Educational Rights and Privacy Act of 1974.)

(20 U.S.C. 1231g)

§ 100b.741 Protection of students' privacy in research and testing.

(a) If a project funded by the Office of Education is designed to explore or develop new or unproven teaching methods or techniques, the grantee must give parents or guardians of children who participate in the project access to instructional material that will be used in connection with the project, including teachers' manuals, films, tapes, or other supplementary instructional material.

(b) No student may be required, as part of any program of the Office of Education, to submit to psychiatric examination, testing, or treatment, or psychological examination, testing, or treatment, in which the primary purpose is to reveal information concerning—

(1) Political affiliations;

(2) Mental and psychological problems potentially embarrassing to the student or his family;

(3) Sex behavior and attitudes;

(4) Illegal, anti-social, self-incriminating and demeaning behavior;

(5) Critical appraisals of other individuals with whom respondents have close family relationships;

(6) Legally recognized privileged and analogous relationships, such as those of lawyers, physicians, and ministers; or

(7) Income—other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under the program—without the prior consent of the student (if the student is an adult or emancipated minor), or in the case of unemancipated minor, without the prior written consent of the parent.

(20 U.S.C. 1232h)

Use of Funds by States and Subgrantees

§ 100b.760 More than one program may assist a single activity.

A State or a subgrantee may use funds under more than one program to support different parts of the same project if the State or subgrantee meets the following conditions:

(a) The State or subgrantee complies with the requirements of each program with respect to the part of the project assisted with funds under that program.

(b) The State or subgrantee has an accounting system that permits identification of the costs paid for under each program.

(20 U.S.C. 1221e–3(a)(1))

§ 100b.761 Federal funds may pay 100 percent of cost.

A State or a subgrantee may use program funds to pay up to 100 percent of the cost of a project if—

(a) The State or subgrantee is not required to match the funds; and

(b) The project can be assisted under the authorizing statute and implementing regulations for the program.

(20 U.S.C. 1221e–3(a)(1))

State Administrative Responsibilities

Cross-reference.—See 45 CFR Part 74, Subpart K—Grant and Subgrant Payment Requirements.

§ 100b.770 A State shall perform certain duties with respect to the applications for subgrants.

With respect to each program that authorizes subgrants, a State shall perform the following duties and any

other duties required by statute or regulations:

(a) Disseminate information regarding the availability of funds under each program.

(b) Develop procedures for applicants to follow in completing and submitting applications for subgrants.

(c) Provide application forms.

(d) Assist applicants in applying for funds.

(e) Review applications and, within the limits of available funds, award subgrants.

(f) Notify each applicant as to whether it will receive a subgrant.

(g) Not act in any manner that prevents eligible applicants from applying under the program.

(20 U.S.C. 1221e-3(a)(1))

§ 100b.771 A State shall encourage eligible applicants to apply.

(a) Each State shall make a reasonable effort to encourage eligible applicants to apply for subgrants.

(b) The State shall inform eligible applicants of—

(1) The availability of subgrants;

(2) The objectives of each program;

(3) The objectives of the State plan for each program;

(4) The assistance the State provides to an applicant in completing and submitting an application; and

(5) The procedures the State uses to select applications for funding.

(20 U.S.C. 1222c-3(a)(1))

§ 100b.772 Other responsibilities of the State.

(a) A State shall—

(1) Provide technical assistance to prospective applicants and subgrantees;

(2) Assist in the evaluation of projects;

(3) Develop and use procedures to monitor each project; and

(4) Develop procedures, issue rules, or take whatever action may be necessary to properly administer each program and to avoid illegal, imprudent, wasteful, or extravagant use of funds by the State or a subgrantee.

(b) This section applies to the program under Title IV of the Elementary and Secondary Education Act unless administrative funds for that program are appropriated under Title V-A of that Act.

(c) This section does not apply to the program under Title I of the Elementary and Secondary Education Act.

Cross-reference.—See § 100b.1 Programs to which Part 100b applies.

(20 U.S.C. 1221e-3(a)(1))

Complaint Procedures of the State

§ 100b.780 A State shall adopt complaint procedures.

(a) A State shall adopt written procedures for—

(1) Receiving and resolving any complaint that the State or a subgrantee is violating a Federal statute or regulations that apply to a program;

(2) Reviewing an appeal from a decision of a subgrantee with respect to a complaint; and

(3) Conducting an independent on-site investigation of a complaint if the State determines that an on-site investigation is necessary.

(b) Sections 100b.780–100b.782 apply to the program under Title IV of the Elementary and Secondary Education Act unless administrative funds for that program are appropriated under Title V-A of that Act.

(c) Sections 100b.780–100b.782 do not apply to the program under Title I of the Elementary and Secondary Education Act.

Cross-reference.—See § 100b.1 Programs to which Part 100b applies.

(20 U.S.C. 1221e-3(a)(1))

§ 100b.781 Minimum complaint procedures.

A State shall include the following in its complaint procedures:

(a) A time limit of 60 calendar days after the State receives a complaint—

(1) If necessary, to carry out an independent on-site investigation; and

(2) To resolve the complaint.

(b) An extension of the time limit under paragraph (a) of this section only if exceptional circumstances exist with respect to a particular complaint.

(c) The right to request the Commissioner to review the final decision of the State.

(20 U.S.C. 1221e-3(a)(1))

§ 100b.782 An organization or individual may file a complaint.

An organization or individual may file a written signed complaint with a State. The complaint must include—

(a) A statement that the State or a subgrantee has violated a requirement of a Federal statute or regulations that apply to a program; and

(b) The facts on which the statement is based.

(20 U.S.C. 1221e-3(a)(1))

§ 100b.783 State educational agency action—subgrantee's opportunity for a hearing.

(a) A subgrantee may request a hearing if it alleges that any of the following actions by the State educational agency violated a State or Federal statute or regulation:

(1) Ordering, in accordance with a final State audit resolution determination, the repayment of misspent or misapplied Federal funds; or

(2) Terminating further assistance for an approved project.

(b) The procedures in § 100b.401(c)(2)-(7) apply to any request for a hearing under this section.

(20 U.S.C. 1231b-2)

Subpart H—What Procedures Does the Commissioner Use to Get Compliance?

Cross-reference.—See 45 CFR Part 74, Subpart M—Grant and Subgrant Closeout, Suspension, and Termination.

§ 100b.900 Waiver of regulations prohibited.

(a) No official, agent, or employee of HEW may waive any regulation that applies to an Office of Education program unless the regulation specifically provide that it may be waived.

(b) No act or failure to act by an official, agent, or employee of HEW can affect the authority of the Commissioner to enforce regulations.

(43 Dec. Comp. Gen. 31(1963))

§ 100b.901 Education Appeal Board.

(a) The Education Appeal Board, established under Part E of GEPA, has the following functions:

(1) Audit appeal hearings under Section 452 of GEPA.

(2) Withholding and termination hearings under Section 453 of GEPA.

(3) Cease and desist hearings under Section 453 of GEPA.

(4) Any other proceeding designated by the Commissioner.

(b) The regulations for the Education Appeal Board are in 45 CFR Part 100d.

(20 U.S.C. 1234)

§ 100b.902 Judicial review.

After a hearing by the Commissioner, a State is usually entitled—generally by the statute that required the hearing—to judicial review of the Commissioner's decision.

(20 U.S.C. 1221e-3(a)(1))

PART 100c—GENERAL

Sec.

100c.1 Definitions that apply to all Education Division programs.
100c.2 Records under the Freedom of Information Act.

Authority: Section 408(a)(1) of Pub. L. 90-247, 88 Stat. 559, 560, as amended (20 U.S.C. 1221e-3(a)(1)), unless otherwise noted.

§ 100c.1 Definitions that apply to all Education Division programs.

(a) Unless a statute or regulation provides otherwise, the definitions in this section apply to the regulations for—

(1) The Museum Services Program (45 CFR Part 64);

(2) Programs of the Office of Education (45 CFR Parts 100–199);

(3) Programs of the National Institute of Education (45 CFR Parts 1400–1499); and

(4) Programs of the Office of the Assistant Secretary for Education (45 CFR Parts 164 and 1501).

(b) The following definitions in 45 CFR Part 74 apply to the regulations listed in paragraph (a) of this section. The section of 45 CFR Part 74 that contains the definition is given in the parentheses.

"Budget" (74.104)

"Contract" (includes definition of "Subcontract") (74.3)

"Equipment" (74.132)

"Federally recognized Indian tribal government" (74.3)

"Grant" (74.3)

"Grantee" (74.3)

"HEW" (74.3)

"Local government" (74.3)

"Personal property" (74.132)

"Real property" (74.132)

"Recipient" (74.3)

"Subgrant" (74.3)

"Subgrantee" (74.3)

"Supplies" (74.132)

(c) The following definitions also apply to the regulations listed in paragraph (a) of this section:

"Acquisition" means taking ownership of property, receiving the property as a gift, entering into a lease-purchase arrangement, or leasing the property. The term includes processing, delivery, and installation of property.

"Applicant" means a party requesting a grant or subgrant under a program of the Education Division.

"Application" means a request for a grant or subgrant under a program of the Education Division.

"Appropriate official of the Education Division" means the official that has overall administrative responsibility for an Education Division program. Depending on the statutory authority for a given program, that official is one of the following:

(a) The Assistant Secretary.

(b) The Commissioner.

(c) The Director of the National Institute of Education.

(d) The Director of the Institute of Museum Services.

"Assistant Secretary" means the Assistant Secretary for Education of the Department of Health, Education, and Welfare or an official or employee of the Education Division acting for the Assistant Secretary under a delegation of authority.

"Award" means an amount of funds that the Education Division provides under a grant or contract.

"Budget period" means an interval of time into which a project period is divided for budgetary purposes.

"Commissioner" means the U.S. Commissioner of Education or an official or employee of the Office of Education acting for the Commissioner under a delegation of authority.

"Department" means the U.S. Department of Health, Education, and Welfare.

"Director of the Institute of Musuem Services" means the Director of the Institute of Museum Services or an officer or employee of the Institute of Museum Services acting for the Director under a delegation of authority.

"Director of the National Institute of Education" means the Director of the National Institute of Education or an officer or employee of the National Institute of Education acting for the Director under a delegation of authority.

"EDGAR" means the Education Division General Administrative Regulations (45 CFR Parts 100a, 100b, 100c, and 100d).

"Education Division" means the HEW agency, headed by the Assistant Secretary, that is composed of—

(a) The Office of the Assistant Secretary (which includes the National Center for Education Statistics);

(b) The Office of Education;

(c) The National Institute of Education; and

(d) The Institute of Museum Services.

"Elementary school" means a day or residential school that provides elementary education, as determined under State law.

"Facilities" means one or more structures in one or more locations.

"Fiscal year" means the Federal fiscal year—a period beginning on October 1 and ending on the following September 30.

"GEPA" means The General Education Provisions Act.

"Grant period" means the period for which funds have been awarded.

"Local educational agency" means—

(a) A public board of education or other public authority legally constituted within a State for either administrative control of or direction of, or to perform service functions for, public elementary or secondary schools in—

(1) A city, county, township, school district, or other political subdivision of a State; or

(2) Such combination of school districts or counties a State recognizes as an administrative agency for its public elementary or secondary schools; or

(b) Any other public institution or agency that has administrative control and direction of a public elementary or secondary school.

(c) As used in 45 CFR Parts 104 and 105 (vocational education programs), the term also includes any other public institution or agency that has administrative control and direction of a vocational education program.

"Minor remodeling" means minor alterations in a previously completed building. The term also includes the extension of utility lines, such as water and electricity, from points beyond the confines of the space in which the minor remodeling is undertaken but within the confines of the previously completed building. The term does not include building construction, stuctural alterations to buildings, building maintenance, or repairs.

"Nonprofit," as applied to an agency, organization, or institution, means that it is owned and operated by one or more corporations or associations whose net earnings do not benefit, and cannot lawfully benefit, any private shareholder or entity.

"Nonpublic," as applied to an agency, organization, or institution, means that the agency, organization, or institution is nonprofit and is not under Federal or public supervision or control.

"Preschool" means the educational level from a child's birth to the time at which the State provides elementary education.

"Private," as applied to an agency, organization, or institution, means that it is not under Federal or public supervision or control.

"Project" means the activity described in an application.

"Project period" means the period for which the appropriate official of the Education Division approves a project.

"Public," as applied to an agency, organization, or institution, means that the agency, organization, or institution is under the administrative supervision or control of a government other than the Federal Government.

"Secondary school" means a day or residential school that provides secondary education as determined under State law. In the absence of State law, the Commissioner may determine, with respect to that State, whether the term includes education beyond the twelfth grade.

"Secretary" means the Secretary of the Department of Health, Education, and Welfare, or an official or employee

of the Department acting for the Secretary under a delegation of authority.

"Service function," with respect to a local educational agency—

(a) Means an educational service that is performed by a legal entity—such as an intermediate agency—

(1)(i) Whose jurisdiction does not extend to the whole State; and

(ii) That is authorized to provide consultative, advisory, or educational services to public elementary or secondary schools; or

(2) That has regulatory functions over agencies having administrative control or direction of public elementary or secondary schools.

(b) The term does not include a service that is performed by a cultural or educational resource.

"State" means any of the 50 States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

"State educational agency" means the State board of education or other agency or officer primarily responsible for the supervision of public elementary and secondary schools in a State. In the absence of this officer or agency, it is an officer or agency designated by the Governor or State law.

"Work of art" means an item that is incorporated into facilities primarily because of its aesthetic value.

(20 U.S.C. 1221e-3(a)(1))

§ 100c.2 Records under the Freedom of Information Act.

The Education Division makes records available in accordance with the Freedom of Information Act and the Department's regulations in 45 CFR Part 5. The Education Division uses the fee schedule in 45 CFR 5.1.

(5 U.S.C. 552)

PART 100d—CERTIFICATION WITH RESPECT TO OPEN MEETINGS BY LOCAL EDUCATIONAL AGENCIES IN CERTAIN PROGRAMS [REVOKED]

4. Part 100d of the General Provisions for Regulations for Office of Education Programs is revoked, and a new Part 100d—Education Appeal Board is added. (This document is published in today's **Federal Register**.)

PART 104—STATE VOCATIONAL EDUCATION PROGRAMS

§§ 104.263, 104.289, 104.291, 104.292, 104.553, 104.634 [Revoked]

§§ 104.171, 104.271, 104.301, 104.533, 104.612, 104.803 [Amended]

5. The following sections are revoked: §§ 104.171 (a) and (h); 104.263; 104.271 (a), (c), and (d); 104.289; 104.291; 104.292; 104.301 (a) and (b); 104.533(c); 104.553; 104.612(b); 104.634; and 104.803(b).

6. Section 104.3 is revised to read as follows:

§ 104.3 Regulations that apply to State Vocational Education Programs.

(a) *Regulations.* The following regulations apply to State Vocational Education Programs:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100b (State-Administered Programs) and Part 100c (Definitions).

(2) The regulations in this Part 104.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e-3(a)(1))

7. Section 104.141(d) is revised to read as follows:

§ 104.141 Requirement for filing a general application.

* * * * *

(d) This general application is in place of the general State application required by 45 CFR 100b.101 of EDGAR.

* * * * *

8. Section 104.301 (c) and (d) are revised to read as follows:

§ 104.301 Application of Federal requirements.

* * * * *

(c) State and local funds that are applied to the maintenance of effort requirements of the Act are subject to the conditions and requirements of the Act, regulations, five-year State plan, and annual program plan.

(d) The Commissioner accepts only actual expenditures of State and local funds as part of the State's matching and maintenance of effort requirements. This means that the State may not use in-kind contributions as part of its matching and maintenance of effort requirements.

PART 105—COMMISSIONER'S DISCRETIONARY PROGRAMS OF VOCATIONAL EDUCATION

§§105.5, 105.6, 105.7, 105.209, 105.210, 105.507, 105.625 [Revoked]

§§ 105.506, 105.605, 105.614, 105.624, Appendix A [Amended]

9. The following sections are revoked: §§105.5; 105.106; 105.107; 105.209; 105.210; 105.506 (c), (d), and (e); 105.507; 105.605 (a); 105.614 (a), (c)(4), and (e); 105.624 (a), (c), and (d); 105.625; and, in Appendix A, the definitions of "Commissioner," "HEW," "Local educational agency," "Secretary," "State," and "State educational agency."

10. Section 105.4 is revised to read as follows:

§ 105.4 Regulations that apply to the Commissioner's Discretionary Programs of Vocational Education.

(a) *Regulations.* The following regulations apply to the Commissioner's Discretionary Programs of Vocational Education.

(1)(i) For Subparts 1, 2, 4, and 5—the Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(ii) For Subpart 3—EDGAR 45 CFR Part 100c only.

(2) The regulations in this Part 105.

(b) *How to use regulations; how to apply for funds.*

The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e-3(a)(1))

11. Section 105.109(a) is revised to read as follows:

§ 105.109 Exemplary and innovative projects.

(a)(1) The Commissioner makes a contract for an exemplary and innovative project only if the project provides for the participation of students enrolled in nonprofit private schools, to the extent that the educational needs of those students is of the type that the project is to meet.

(2) Section 100a.680 of the EDGAR references the regulations that govern the participation of those students.

* * * * *

12. Section 105.204 is revised to read as follows:

§ 105.204 Competitive awards.

The Commissioner makes awards competitively except to the extent that

appropriate sections of the Indian Self-Determination and Education Assistance Act of 1975 apply or to the extent that more specific regulations in this subpart apply.

(Sec. 103(a)(1)(B)(iii); 20 U.S.C. 2303; 25 U.S.C. 450e(b))

13. Section 105.206 is amended by revising the first sentence to read as follows:

§ 105.206 Applications for assistance contracts.

An application from an eligible tribal organization must be submitted to the Commissioner by the Indian tribe. * * *

14. Section 105.604 is amended by removing paragraphs (b) and (e) and revising paragraph (a) to read as follows:

§ 105.604 Applications for grants or contracts.

(a) An applicant shall give the State board an opportunity to comment on its application.

(b) (Deleted)

* * * * *

(e) (Deleted)

PART 107—FEDERAL FINANCIAL ASSISTANCE FOR PLANNING AND EVALUATION [REVOKED]

15. Part 107 is revoked.

PART 116b—STATE OPERATED PROGRAMS FOR HANDICAPPED CHILDREN

§§ 116b.10, 116b.11 [Revoked]

§§ 116b.13, 116b.23, 116b.32, 116b.60 [Amended]

16. The following sections are revoked: §§ 116b.10; 116b.11; 116b.13(a), (b), and (f); 116b.23(b); 116b.32(b); and 116b.60(a) and (b)(3).

17. Section 116b.2 is revised to read as follows:

§ 116b.2 Regulations that apply to State Operated Programs for Handicapped Children.

(a) *Regulations.* The following regulations apply to State Operated Programs for Handicapped Children:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100b (State-Administered Programs) and Part 100c (Definitions).

(2) The regulations in this Part 116b.

(3) The regulations in 45 CFR Part 116 (general requirements relating to Title I of the Act). However, § 116.40(b) (Use of funds for services that the applicant is required to provide) does not apply.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e-3(a)(1))

PART 116c—GRANTS TO STATE AGENCIES FOR PROGRAMS TO MEET THE SPECIAL EDUCATIONAL NEEDS OF CHILDREN IN INSTITUTIONS FOR NEGLECTED OR DELINQUENT CHILDREN

§§ 116c.3, 116c.13 [Amended]

18. The following sections are revoked: §§ 116c.3(b) and 116c.13(a).

19. Section 116c.1 is amended by revising paragraph (b) to read as follows:

§ 116c.1 Applicability.

* * * * *

(b) *Regulations that apply to programs for neglected or delinquent children.*

(1) *Regulations.* The following regulations apply to programs for neglected or delinquent children:

(i) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100b (State-Administered Programs) and Part 100c (Definitions).

(ii) 45 CFR Part 116 (general requirements relating to Title I of the Act).

(iii) The regulations in this Part 116c.

(2) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(i) Using regulations that apply to Education Division programs; and

(ii) Applying for assistance under an Education Division program.

* * * * *

PART 121a—ASSISTANCE TO STATES FOR EDUCATION OF HANDICAPPED CHILDREN

§§ 121a.15, 121a.112, 121a.113, 121a.114, 121a.120, 121a.135, 121a.142, 121a.143, 121a.150, 121a.181, 121a.191, 121a.228, 121a.232, 121a.233, 121a.234, 121a.236, 121a.239, 121a.386, 121a.453, 121a.454, 121a.455, 121a.456, 121a.457, 121a.458, 121a.459, 121a.460, 121a.581, 121a.582, 121a.583, 121a.590, 121a.591, 121a.592, 121a.593, 121a.601, 121a.602 [Revoked]

§§ 121a.8, 121a.183, 121a.190, 121a.193, 121a.452 [Amended]

20. The following sections are revoked: §§ 121a.8(a); 121a.15; 121a.112; 121a.113; 121a.114; 121a.120; 121a.135; 121a.142; 121a.143; 121a.150; 121a.181; 121a.183(b); 121a.190(a); 121a.191; 121a.193(a) and (b); 121a.228; 121a.232; 121a.233; 121a.234; 121a.236; 121a.239; 121a.386; 121a.452(b); 121a.453; 121a.454; 121a.455; 121a.456; 121a.457; 121a.458; 121a.459; 121a.460; 121a.581; 121a.582; 121a.583; 121a.590; 121a.591; 121a.592; 121a.593; 121a.601; and 121a.602.

21. Section 121a.3 is revised to read as follows:

§ 121a.3 Regulations that apply to Assistance to States for Education of Handicapped Children.

(a) *Regulations.* The following regulations apply to this program of Assistance to States for Education of Handicapped Children.

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100b (State-Administered Programs) and Part 100c (Definitions).

(2) The regulations in this Part 121a.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e-3(a)(1))

Definitions

* * * * *

22. Section 121a.450 is revised to read as follows:

§ 121a.450 Definition of "private school handicapped children."

As used in §§ 121a.451–121a.452, "private school handicapped children" means handicapped children enrolled in private schools or facilities other than handicapped children covered under §§ 121a.400–121a.403.

(20 U.S.C. 1413(a)(4)(A))

23. Section 121a.451 is revised to read as follows:

§ 121a.451 State educational agency responsibility.

The State educational agency shall insure that—

(a) To the extent consistent with their number and location in the State, provision is made for the participation of private school handicapped children in the program assisted or carried out under this part by providing them with special education and related services; and

(b) The requirements in 45 CFR 100b.651–100b.663 of EDGAR are met.

(20 U.S.C. 1413(a)(4)(A))

PART 121b—REGIONAL RESOURCE CENTERS

§§ 121b.1, 121b.13 [Amended]

24. The following sections are revoked: §§ 121b.1(b) and 121b.13(a).

25. A new § 121b.5 is added to read as follows:

§ 121b.5 Regulations that apply to the Regional Resource Centers Program.

(a) *Regulations.* The following regulations apply to the Regional Resource Centers Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Part 121b.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e–3(a)(1))

PART 121c—CENTERS AND SERVICES FOR DEAF-BLIND CHILDREN

§§ 121c.1, 121c.10, 121c.34 [Amended]

26. The following sections are revoked: §§ 121c.1(b); 121c.10 (b) and (c); and 121c.34(b).

27. A new § 121c.4 is added to read as follows:

§ 121c.4 Regulations that apply to the Centers and Services for Deaf-Blind Children Program.

(a) *Regulations.* The following regulations apply to the Centers and Services for Deaf-Blind Children Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Part 121c.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e–3(a)(1))

PART 121d—EARLY EDUCATION FOR HANDICAPPED CHILDREN

§ 121d.54 [Revoked]

§§ 121d.1, 121d.17, 121d.31, 121d.40, 121d.52 [Amended]

28. The following sections are revoked: §§121d.1(b); 121d.17 (1st sentence only); 121d.31(b); 121d.40(b); 121d.52(a); and 121d.54.

29. A new Subpart D is added to read as follows:

Subpart D—Other Applicable Regulations

Sec.

121.60 Regulations that apply to the Handicapped Children Early Education Program.

§ 121d.60 Regulations that apply to the Handicapped Children Early Education Program.

(a) *Regulations.* The following additional regulations apply to the Handicapped Children Early Education Program under Subparts A, B, and C of this part:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Part 121d.

(3) For the programs under Subparts B and C only, the regulations in 45 CFR Part 121e.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e–3(a)(1))

PART 121e—AUXILIARY ACTIVITIES

§ 121e.5 [Revoked]

§ 121e.1 [Amended]

30. The following sections are revoked: §§ 121e.1(b) and 121e.5.

A new § 121e.1–1 is added to read as follows:

§ 121e.1-1 Regulations that apply to the Auxiliary Activities Program.

(a) *Regulations.* The following regulations apply to the Auxiliary Activities Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Part 121e.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1223–3(a)(1))

PART 121f—TRAINING PERSONNEL FOR THE EDUCATION OF THE HANDICAPPED

§§ 121f.1, 121f.5 [Amended]

31. The following sections are revoked: 121f.1(b); 121f.5(d)(1); and 121f.22(b).

32. A new § 121f.6–1 is added to read as follows:

§ 121f.6-1 Regulations that apply to the Training Personnel for the Education of the Handicapped Program.

(a) *Regulations.* The following regulations apply to the Training Personnel for the Education of the Handicapped Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Part 121f.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e–3(a)(1))

PART 121g—RECRUITMENT OF PERSONNEL AND DISSEMINATION OF INFORMATION

§ 121g.1 [Amended]

33. Section 121g.1(b) is revoked.

34. A new § 121g.5 is added to read as follows:

§ 121g.5 Regulations that apply to the Recruitment of Personnel and Dissemination of Information Program.

(a) *Regulations.* The following regulations apply to the Recruitment of Personnel and Dissemination of Information Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Part 121g.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e–3(a)(1))

PART 121h—RESEARCH IN EDUCATION OF THE HANDICAPPED

§ 121h.9 [Revoked]

§§ 121h.1, Appendix [Amended]

35. The following sections are revoked: §§ 121h.1(b); 121h.9; and, in the Appendix, §§ 3.1, 3.2(a) (1st and 2nd sentences only) and (b)(3)(i), (ii), (iii), and (iv), (b)(4)(v), and (b)(5).

36. A new § 121h.1–1 is added to read as follows:

§ 121h.1–1 Regulations that apply to the Research in Education of the Handicapped Program.

(a) *Regulations.* The following regulations apply to the Research in Education of the Handicapped Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Part 121h.

(3) The definitions in 45 CFR Part 121a.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e–3(a)(1))

PART 121i—INSTRUCTIONAL MEDIA FOR THE HANDICAPPED

§§ 121i.89, 121i.90, 121i.119, 121i.120 [Revoked]

§ 121i.1 [Amended]

37. The following sections are revoked: §§ 121i.1(b); 121i.89; 121i.90; 121i.119; and 121i.120.

38. A new § 121i.7 is added to read as follows:

§ 121i.7 Regulations that apply to the Instructional Media for the Handicapped Program.

(a) *Regulations.* The following regulations apply to the Instructional Media for the Handicapped Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Part 121i.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e–3(a)(1))

PART 121k—REGIONAL EDUCATION PROGRAMS FOR HANDICAPPED PERSONS

§§ 121k.1, 121k.19 [Amended]

39. The following sections are revoked: 121k.1(b) and 121k.19(c).

40. A new § 121k.5 is added to read as follows:

§ 121k.5 Regulations that apply to Regional Education Programs for Handicapped Persons.

(a) *Regulations.* The following regulations apply to Regional Education Programs for Handicapped Persons:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Part 121k.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e–3(a)(1))

41. Section 121k.15 is amended by revising the introductory text and deleting paragraphs (f) and (g) as follows:

§ 121k.15 Application requirements.

Applications for funds under this part must contain the following information:

* * * * *

(f) (Deleted)

(g) (Deleted)

42. Section 121k.16 is amended by revising paragraph (f) to read as follows:

§ 121k.16 Initial year application.

* * * * *

(f) A description of how the requirement under 45 CFR 100a.580 of EDGAR (Coordination with other activities) will be met.

* * * * *

PART 121m—INCENTIVE GRANTS

§§ 121m.9, 121m.10 [Revoked]

43. The following sections are revoked: §§ 121m.9 and 121m.10.

44. Section 121m.2 is revised to read as follows:

§ 121m.2 Regulations that apply to the Incentive Grants Program.

(a) *Regulations.* The following regulations apply to the Incentive Grants Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100b (State-Administered Programs) and Part 100c (Definitions).

(2) The regulations in this Part 121m.

(3) The definitions in Part 121a.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e–3(a)(1))

PART 130—LIBRARY SERVICES, PUBLIC LIBRARY CONSTRUCTION, AND INTERLIBRARY COOPERATION

§§ 130.30, 130.41 [Revoked]

§§ 130.3, 130.16, 130.32 [Amended]

45. The following text in Part 130 is revoked: The terms "Commissioner" and "State" in §§ 130.3, 130.16(b)(2); 130.30; 130.32(b); and 130.41.

46. Section 130.2 is revised to read as follows:

Part 130.2 Regulations that apply to the Library Services and Construction Program.

(a) *Regulations.* The following regulations apply to the Library Services and Construction Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100b (State-Administered Programs) and Part 100c (Definitions).

(2) The regulations in this Part 130.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e–3(a)(1))

PART 131—COLLEGE LIBRARY RESOURCES PROGRAM

§ 131.4 [Amended]

47. Paragraphs (a) and (b) or § 131.4 are revoked.

48. Section 131.5 is revised to read as follows:

§ 131.5 Regulations that apply to the College Library Resources Program.

(a) *Regulations.* The following regulations apply to the College Library Resources Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Part 131.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e–3(a)(1))

PART 132—GRANTS FOR TRAINING IN LIBRARIANSHIP

§§ 132.21, 132.37 [Revoked]

49. The following sections are revoked: §§ 132.21 and 132.37.

50. A new § 132.1–1 is added to read as follows:

§ 132.1–1 Regulations that apply to the Training in Librarianship Program.

(a) *Regulations.* The following regulations apply to the Training in Librarianship Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Part 132.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e–3(a)(1))

PART 133—LIBRARY RESEARCH AND DEMONSTRATION

§§ 133.6, 133.9 [Revoked]

51. The following sections are revoked: §§ 133.6 and 133.9.

52. Section 133.4 is revised to read as follows:

§ 133.4 Regulations that apply to the Library Research and Demonstration Program.

(a) *Regulations.* The following regulations apply to the Library Research and Demonstration Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Part 133.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e–3(a)(1))

PART 136—STRENGTHENING RESEARCH LIBRARY RESOURCES

§ 136.10 [Revoked]

§§ 136.01, 136.03, 136.05, 136.08 [Amended]

53. The following text is revoked: § 136.01(b); the definitions of "Past fiscal year" and "State" in §§ 136.03; 136.05(a)(2), (a)(4), (b), (c), and (d); § 136.08(b) and (c); and § 136.10.

54. A new § 136.02–1 is added to read as follows:

§ 136.02–1 Regulations that apply to the Strengthening Research Library Resources Program.

(a) *Regulations.* The following regulations apply to the Strengthening Research Library Resources Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Part 136.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e–3(a)(1))

PART 137—EDUCATIONAL INFORMATION CENTERS PROGRAM

§§ 137.7, 137.8 [Revoked]

§§ 137.1, 137.2 [Amended]

55. The following text is revoked: § 137.1(b); the definition of "State" in §§ 137.2; 137.7; and 137.8.

56. A new § 137.2–1 is added to read as follows:

§ 137.2–1 Regulations that apply to the Educational Information Centers Program.

(a) *Regulations.* The following regulations apply to the Educational Information Centers Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100b (State-Administered Programs) and Part 100c (Definitions).

(2) The regulations in this Part 137.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e–3(a)(1))

57. Section 137.5 is amended to add a new paragraph (c) as follows:

§ 137.5 State plan requirements—initial year.

* * * * *

(c) A State plan remains in effect for the duration of the Education Information Centers authorization.

58. Section 137.6 is amended by revising the introductory text to paragraph (a), by revising (a)(5), (a)(6), and (c) and by deleting paragraphs (a)(1) and (b) as follows:

§ 137.6 Annual applications.

(a) If a State has a State plan in effect, the State may apply to the Commissioner for its allocation of funds for the second and each succeeding year of its participation in the program. The application must include the following information:

(1) (Deleted)

* * * * *

(5) The location of each Center currently operating and any changes in the location of a Center from the previous year;

(6) The program activities and services being provided through each Center and any changes in those activities and services from the previous year;

* * * * *

(b) (Deleted)

(c) A State that, for its initial year, submitted a plan to plan for the development of items required by 45 CFR 136.5(a) (4), (5), (7), (8), and (9) shall submit those completed items with its first application.

(20 U.S.C. 1070d–3)

59. Paragraph (b) of § 137.9 is revised to read as follows:

§ 137.9 Allowable costs—matching requirement.

* * * * *

(b) The State shall provide 33⅓ percent of those costs.

(20 U.S.C. 1070d–2)

PART 146—MODERN FOREIGN LANGUAGE AND AREA STUDIES

§§ 146.15, 146.17, 146.25, 146.27, 146.53 [Revoked]

§§ 146.16, 146.26 [Amended]

60. The following sections are revoked: §§ 146.15; 146.16(a); 146.17; 146.25; 146.26(a); 146.27; and 146.53.

61. Section 146.3 is revised to read as follows:

§ 146.3 Regulations that apply to the Modern Foreign Language and Area Studies Program.

(a) *Regulations.* The following regulations apply to the Modern Foreign Language and Area Studies Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions). (Note: Part 100a does not apply to the Fellowship Program under Subpart D.)

(2) The regulations in this Part 146.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e–3(a)(1))

PART 146a—CITIZEN EDUCATION FOR CULTURAL UNDERSTANDING PROGRAM

§§ 146a.1, 146a.4, 146a.5 [Amended]

62. The following text is revoked: §§ 146a.1(b); 146a.4(b)(2); and 146a.5(a).

63. A new § 146a.2–1 is added to read as follows:

§ 146a.2–1 Regulations that apply to the Citizen Education for Cultural Understanding Program.

(a) *Regulations.* The following regulations apply to the Citizen Education for Cultural Understanding Program.

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Part 146a.

(b) *How to use regulations; how to apply for funds.*
The "Introduction to Regulations of the Education Division at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e–3(a)(1))

64. Paragraph (b) of § 146a.6 is revised to read as follows:

§ 146a.6 Project requirements.

* * * * *

(b) Permissible costs include library acquisition of materials appropriate to the program, the use of computer hardware, and the acquisition or development of computer software.

* * * * *

PART 148—HIGHER EDUCATION PROGRAMS IN MODERN FOREIGN LANGUAGE TRAINING AND AREA STUDIES

§§ 148.1, 148.2, 148.37, 148.51, 148.55, Appendix [Amended]

65. The following text is revoked: § 148.1(b); the definitions of "Local school system," "State," and "State department of education" in §§ 148.2; 148.37(2); 148.51 (a) and (b); 148.55(a); and, in the Appendix, §§ 8.1, 11.1, 12.1, and 12.2.

66. A new § 148.5 is added to read as follows:

§ 148.5 Regulations that apply to this program.

(a) *Regulations.* The following regulations apply to the Higher Education Programs in Modern Foreign Language Training and Area Studies:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Part 148.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e–3(a)(1))

67. Paragraph (a) of § 148.12 is revised to read as follows:

§ 148.12 Applications.

(a) Each fiscal year eligible institutions may recommend graduate students for fellowships under this subpart and forward to the Commissioner applications for those students. Each application must include information as to the student's personal and academic background and proposed research project. In addition to the application, each student shall arrange with appropriate persons to have three reference forms (Form OE 7628–3) and one language reference form (Form 7628–1) submitted through his or her eligible institution to the Commissioner on his or her behalf.

* * * * *

68. Paragraph (a) of § 148.22 is revised to read as follows:

§ 148.22 Applications.

(a) Each fiscal year eligible institutions may recommend to the Commissioner faculty members for assistance under this subpart and forward to the Commissioner applications from those faculty members. Each application must include information as to the faculty member's personal academic background and proposed research project.

* * * * *

69. Section 148.32 is amended by revising paragraph (a), the introduction sentence to paragraph (b), by revising (b)(2) and by deleting paragraph (d), to read as follows:

§ 148.32 Applications.

(a) Each fiscal year eligible institutions may forward proposals to the Commissioner for assistance under this subpart.

(b) An "eligible institution" for the purpose of this subpart means—

* * * * *

(2) A State educational agency;

* * * * *

(d) (Deleted)

70. Section 148.36 is amended by revising the introductory text to paragraph (b) to read as follows:

§ 148.36 Award provisions.

* * * * *

(b) Grant funds under this subpart may only be used for the following:

* * * * *

71. Section 148.42 is amended by revising the introductory text to paragraph (b), by revising (b) (2) and (3) and by deleting paragraph (d) as follows:

§ 148.42 Applications.

* * * * *

(b) An "eligible institution" for the purpose of this subpart means—

* * * * *

(2) A State educational agency;

(3) A local educational agency;

* * * * *

(d) (Deleted)

72. Paragraph (a) of § 148.46 is amended by revising the introductory text to read as follows:

§ 148.46 Award provisions.

(a) Grant funds under this part may be used only for the following:

* * * * *

PART 149—COMMISSIONER'S RECOGNITION PROCEDURES FOR NATIONAL ACCREDITING BODIES AND STATE AGENCIES

§ 149.2 [Amended]

73. Section 149.2 is amended by revoking the definition of "States."

PART 154—EDUCATIONAL OPPORTUNITY CENTERS

74. The following text in Part 154 is revoked: § 154.1(b); the definition of "State" in §§ 154.2; 154.3(a)(2); and 154.11(c).

75. A new § 154.1–1 is added to read as follows:

§ 154.1–1 Regulations that apply to the Educational Opportunity Centers Program.

(a) *Regulations.* The following regulations apply to the Educational Opportunity Centers Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Part 154.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e–3(a)(1))

76. Section 154.5 is amended by revising the introductory text to paragraph (a) and (b) and deleting paragraphs (a)(3)–(6), (b) and (c) as follows:

§ 154.5 Applications.

(a) Applications must include the following:

* * * * *

(3) (Deleted)
(4) (Deleted)
(5) (Deleted)
(6) (Deleted)

* * * * *

(b) (Deleted)
(c) (Deleted)

PART 155—UPWARD BOUND PROGRAM

§ 155.12 [Revoked]

§§ 155.1, 155.2, 155.6 [Amended]

77. The following text is revoked: §§ 155.1(b); 155.2(f); 155.6(b); and 155.12.

78. A new § 155.1–1 is added to read as follows:

§ 155.1–1 Regulations that apply to the Upward Bound Program.

(a) *Regulations.* The following regulations apply to the Upward Bound Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Part 155.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e–3(a)(1))

79. Section 155.5 is amended by revising paragraph (e)(3) and by deleting paragraph (e)(4) as follows:

§ 155.5 Summer residential, academic year, and veterans components.

* * * * *

(e) * * *
(3) Engage a full-time project director.
(4) (Deleted)

* * * * *

80. Paragraph (a) of § 155.7 is amended by deleting paragraphs (a)(2)(iv), (a)(3)(iii) and (iv), (a)(4) and (b) as follows:

§ 155.7 Applications.

(a) * * *
(2) * * *
(iv) (Deleted)
(3) * * *
(iii) (Deleted)
(iv) (Deleted)
(4) (Deleted)
(b) (Deleted)

* * * * *

81. Section 155.9 is amended by revising paragraph (a)(3) and by revoking paragraphs (a)(4) and (5), to read as follows:

§ 155.9 Program requirements.

(a) * * *
(3) Engage a full-time project director;
(4) (Deleted)
(5) (Deleted)

* * * * *

82. Section 155.11 is amended by revising the introductory text to paragraph (a) and by deleting paragraphs (b)(1) and (c), as follows:

§ 155.11 Allowable costs-stipends.

(a) Allowable project costs may include:

* * * * *

(b) * * *
(1) (Deleted)

* * * * *

(c) (Deleted)

* * * * *

83. Section 155.14 is amended by revising the introductory text to read as follows:

§ 155.14 Travel.

The following travel is authorized:

* * * * *

84. Section 155.15 is amended by revising the introductory text to read as follows:

§ 155.15 Coordination of administration with other programs authorized by Title IV–A–4 of the Act.

In addition to the requirements in 45 CFR 100a.580 and 155.9, if an aplicant also requests funds to carry out one or more of the programs authorized by Title IV–A–4 of the Act, the application must reflect the following:

* * * * *

PART 156—ASSISTANCE TO STATES FOR STATE EQUALIZATION PLANS [REVOKED]

85. Part 156 is revoked.

PART 157—SPECIAL SERVICES FOR DISADVANTAGED STUDENTS PROGRAM

§ 157.12 [Revoked]

§§ 157.1, 157.2, 157.4 [Amended]

86. The following text is revoked: §§ 157.1(b); 157.2(m); 157.4(b) and (c); and 157.12.

87. A new § 157.1–1 is added to read as follows:

§ 157.1–1 Regulations that apply to the Special Services for Disadvantaged Students Program.

(a) *Regulations.* The following regulations apply to the Special Services for Disadvantaged Students Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Part 157.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e–3(a)(1))

88. Section 157.5 is amended by revising the introductory text of paragraph (a), by revising paragraph (a)(3)(v), and by deleting paragraphs

(a)(2)(iii), (a)(3)(i), (a)(3)(vii), (a)(4) and (b) as follows:

§ 157.5 Applications.

(a) An application must contain the following information:

* * * * *

(2) * * *

(iii) (Deleted)

(3) * * *

(i) (Deleted)

* * * * *

(v) A description of the manner in which the applicant will orient the faculty and staff of the institution to the goals and objectives of the Special Services program;

* * * * *

(vii) (Deleted)

(4) (Deleted)

(b) (Deleted)

* * * * *

89. Section 157.7 is amended by revoking paragraphs (a)(5) and (b)(7), and by revising paragraph (b)(6), to read as follows:

§ 157.7 Program requirements.

(a) * * *

(5) (Deleted)

* * * * *

(b) * * *

(6) Engage a full-time project director;

(7) (Deleted)

* * * * *

90. Section 157.11 is amended by revising the introductory text to paragraph (a) and deleting paragraphs (b)(2) and (c), to read as follows:

§ 157.11 Allowable costs.

(a) Allowable project costs may include the following:

* * * * *

(2) (Deleted)

* * * * *

(c) (Deleted)

91. Section 157.14 is amended by revising the introductory text, to read as follows:

§ 157.14 Travel.

The folllowing travel is authorized:

* * * * *

92. Section 157.15 is amended by revising the introductory text, to read as follows:

§ 157.15 Coordination of administration with other programs authorized by Title IV-A-4 of the Act.

In addition to the requirements in 45 CFR 100a.580 and 157.7, if an applicant under this part also requests funds to carry out one or more of the programs authorized by Title IV-A-4 of the Act, the application must reflect the following:

* * * * *

PART 158—FOLLOW THROUGH PROGRAM

§§ 158.29, 158.30, 158.43, 158.64, 158.66, 158.85 [Revoked]

§§ 158.2, 158.12, 158.13, 158.24 [Amended]

93. The following text is revoked: The definitions of "Local educational agency," "State," and "State educational agency" in § 158.2; §§ 158.12(d); 158.13(b); 158.24(a); 158.29; 158.30; 158.43; 158.64 (the last sentence only); 158.66; and 158.85.

94. A new § 158.4 is added to read as follows:

§ 158.4 Regulations that apply to the Follow Through Program.

(a) *Regulations.* The following regulations apply to the Follow Through Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Part 158.

(b) *Exceptions to EDGAR.* An applicant for a continuation award under the Follow Through Program shall submit, in addition to the information required by EDGAR 45 CFR 100a.118, information that addresses each selection criterion that applies to the program.

(c) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e-3(a)(1))

95. Section 158.24 is amended by revising the introductory text to paragraph (b) and deleting paragraph (a) as follows:

§ 158.24 Evaluation of program effectiveness.

(a) (Deleted)

(b) *Standards for evaluation.* In evaluating the effectiveness of the Follow Through Program, the Commissioner uses standards such as the following:

* * * * *

96. Section 158.84 is revised to read as follows:

§ 158.84 Suspension; refusal to refund.

(a) The Commissioner only suspends assistance under this program in an emergency. An emergency exists if there is evidence of flagrant misuse of funds by a recipient, or evidence of unauthorized activity by the recipient that poses a threat of harm to children participating in the program. (See 45 CFR Part 100e for the procedures of the Education Appeal Board.)

(b) The Commissioner does not deny applications for refunding under this part unless the applicant has been given reasonable notice and opportunity to show cause why this action should not be taken.

PART 159—TALENT SEARCH PROGRAM

§ 159.12 [Revoked]

§§ 159.1, 159.2, 159.5 [Amended]

97. The following text is revoked; §§ 159.1(b); 159.2(j); 159.5(b); and 159.12.

98. A new § 159.1-1 is added to read as follows:

§ 159.1-1 Regulations that apply to the Talent Search Program.

(a) *Regulations.* The following regulations apply to the Talent Search Program—

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Part 159.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e-3(a)(1))

99. Section 159.6 is amended by revising the introductory text to paragraph (a) and by revoking paragraphs (a)(2)(iii), (a)(3) (iii) and (iv), (a)(4), and (b), to read as follows:

§ 159.6 Applications.

(a) An application under this part must provide the following information:

* * * * *

(2) * * *

(iii) (Deleted)

(3) * * *

(iii) (Deleted)

(iv) (Deleted)

(4) (Deleted)

(b) (Deleted)

* * * * *

100. Section 159.9 is amended by revising paragraph (b)(6) and by revoking paragraphs (b) (7) and (8), to read as follows:

§ 159.9 Project activities and services-project requirements.

* * * * *

(b) * * *

(6) Engage a full-time project director.

(7) (Deleted)

(8) (Deleted)

* * * * *

101. Section 159.11 is amended by revising the introductory text to paragraph (a) and by revoking paragraphs (b)(5) and (c), to read of follows:

§ 159.11 Allowable costs.

(a) Allowable project costs may include:

* * * * *

(b) * * *

(5) (Deleted)

* * * * *

(c) (Deleted)

102. Section 159.14 is amended by revising the introductory text as follows:

§ 159.14 Travel.

The following travel is authorized:

* * * * *

103. Section 159.15 is amended by revising the introductory text, to read as follows:

§ 159.15 Coordination of administration with other programs authorized by Title IV-A-4 of the Act.

In addition to the requirements in 45 CFR 100a.580 and § 159.9, if an applicant under this part requests funds to carry out one or more of the programs authorized by Title IV–A–4 of the Act, the application must reflect the following:

* * * * *

PART 160d—CAREER EDUCATION PROGRAM [REVOKED]

104. Part 160d is revoked.

PART 161—CAREER EDUCATION, STATE ALLOTMENT PROGRAM

105. Section 161.3 is amended by revising the term "State," to read as follows:

§ 161.3 Definitions.

* * * * *

"State" means any one of the 50 States of the United States, the District of Columbia, or the Commonwealth of Puerto Rico. The definition of "State" in 45 CFR Part 100c of EDGAR does not apply to this program.

106. Section 161.4 is revised to read as follows:

§ 161.4 Regulations that apply to the State Allotment Program.

(a) *Regulations.* The following regulations apply to the State Allotment Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Part 161.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 2301 *et seq.*)

§ 161.41 [Amended]

107. Section 161.41 is amended by deleting "§ 100b.633" and substituting in its place "§ 100b.662."

PART 161a—CAREER EDUCATION, DISCRETIONARY PROGRAMS

§ 161a.3 [Amended]

108. Section 161a.3(b) is revoked.

PART 164—CAPACITY-BUILDING FOR STATISTICAL ACTIVITIES IN STATE AGENCIES

109. The title of Part 164 is revised to read as above.

§§ 164.06, 164.08, 164.09 [Revoked]

§§164.01, 164.05, 164.07 [Amended]

110. The following text of Part 164 is revoked: §§ 164.01(b); 164.05(a) and (c); 164.06; 164.07(b) (last sentence only) and (d); 164.08; 164.09.

111. A new § 164.01–1 is added to read as follows:

§ 164.01-1 Regulations that apply to this program.

(a) *Regulations.* The following regulations apply to the Capacity-Building Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions);

(2) The regulations in this Part 164.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e–3(a)(1))

112. Section 164.02 is revised to read as follows:

§ 164.02 Purpose of the Capacity-Building Program.

The purpose of this program is to build the statistical capabilities of State agencies by facilitating improvements or automation in their statistical systems.

113. Section 164.03 is amended by revising the introductory text and by deleting the definitions of "State" and "State educational agency" and by adding a definition of "State agency," as follows:

§ 164.03 Definitions.

The following definitions apply to terms used in these regulations:

* * * * *

"State" (Deleted)

"State agency" means—

(a) A State educational agency;

(b) A State agency listed in the appendix to these regulations with statewide responsibility for postsecondary education or, if there is no agency for that purpose, an officer or agency designated by the Governor or by State law; or

(c) The State board or agency designated or established as the sole State agency responsible for the administration, or for the supervision of the administration, of programs authorized by Part A, Title I of the Vocational Education Act of 1963, as amended by Pub. L. 94–482.

"State educational agency" (Deleted)

* * * * *

§§ 164.04, 164.05, and 164.07 [Amended]

114. The following sections are amended by deleting the term "State educational agency" and by inserting instead of that term, the term "State agency": §§ 164.04(a); 164.05(b); and 164.07(a), (b) and (c).

PART 168—GENERAL PROVISIONS RELATING TO STUDENT ASSISTANCE PROGRAMS

§ 168.72 [Amended]

115. Section 168.72 is amended by revoking the definition of "Commissioner."

PART 169—STRENGTHENING DEVELOPING INSTITUTIONS PROGRAM

§§ 169.2, 169.22, 169.51, 169.54 [Amended]

116. The following text is revoked: the definitions of "Applicant," "Commissioner," "Public," and "State" in §§ 169.2; 169.22(b)(2) (ii) and (iii); 169.51 (2d sentence only); and 169.54(c).

117. Section 169.5 is revised to read as follows:

§ 169.5 Regulations that apply to the Strenthening Developing Institutions Program.

(a) *Regulations.* The following regulations apply to the Strengthening Developing Institutions Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions)

(2) The regulations in this Part 169.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e-3(a)(1))

118. Section 169.32 is amended by revoking the introductory text in paragraph (b), by revoking paragraph (b)(3), and by redesignating paragraph (b) (1) and (2) as paragraphs (b) and (c), as follows:

§ 169.32 Allowable costs.

* * * * *

(b) The grantee may not charge indirect costs to the grant.

(c) The purchase of equipment is limited to equipment that is necessary to achieve program objectives.

(20 U.S.C. 1054)

119. Section 169.41 is amended by deleting paragraph (a) and revising paragraph (b) to read as follows:

§ 169.41 Submission of applications.

(a) (Deleted)

(b) An applicant shall include in its application a long-range plan in as much detail as is necessary for the Commissioner to judge proposed activities, appropriate length of funding, and resources needed. An application submitted for funds appropriated for any fiscal year after fiscal year 1979 must specifically include in the long-range plan—

(1) Long- and short-range goals;

(2) Planned activities;

(3) Criteria for measuring progress;

(4) Time schedules;

(5) Resources needed; and

(6) Procedures to be used to monitor progress of the proposed Title III activities against the plan. However, an applicant need not submit a long-range plan if the applicant is seeking funding for planning activities only.

(20 U.S.C. 1051, 1054)

PART 172—TEACHER CORPS

§§ 172.110, 172.127, 172.128, 172.134, 172.136, 172.137 [Revoked]

§§ 172.3, 172.112, 172.132, 172.135 [Amended]

120. The following text is revoked: § 172.1(b); the definitions of "Local educational agency," "State," and "State educational agency" in §§ 172.3; 172.110; 172.112(b); 172.127; 172.128; 172.132 (e) and (f); 172.134; 172.135(b); 172.136; and 172.137.

121. A new § 172.4 is added to read as follows:

§ 172.4 Regulations that apply to the Teacher Corps Program.

(a) *Regulations.* The following regulations apply to the Teacher Corps Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Part 172.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e-3(a)(1))

122. Section 172.30 is amended by revising paragraph (a) to read as follows:

§ 172.30 Project duration.

(a) Each application may be for up to a five-year project period.

* * * * *

PART 173—COMMUNITY SERVICE AND CONTINUING EDUCATION PROGRAMS

§§ 173.2, 173.14, 173.15, 173.16, 173.17, 173.18 173.19, 173.46 [Revoked]

§§ 173.13, 173.21 [Amended]

123. The following text is revoked: §§ 173.2; 173.13(a), (b), (d), and (e); 173.14; 173.15; 173.16; 173.17; 173.18; 173.19; 173.21(a)(2) and (b); and 173.46.

124. A new § 173.9 is added to subpart B, to read as follows:

§ 173.9 Regulations that apply to the State grant program.

(a) *Regulations.* The following regulations apply to the State grant program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100b (State-Administered Programs) and Part 100c (Definitions).

(2) The regulations in this Subpart B.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e-3(a)(1))

125. A new § 173.39 is added to Subpart C, to read as follows:

§ 173.39 Regulations that apply to special programs and projects.

(a) *Regulations.* The following regulations apply to special programs and projects:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Subpart C.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e-3(a)(1))

126. Section 173.44 is revised as follows:

§ 173.44 Application requirements

An application must state—

(a) The applicant's share of the total project cost, which may not be less than 10 percent; and

(b) Assurances that the designated State agency that administers the State grant program under Title I-A has had an opportunity to review and comment on the proposed application.

(20 U.S.C. 1005a(b); S. Rept. No. 92-346 at 10 (1971))

PART 174—NATIONAL DIRECT STUDENT LOAN PROGRAM

§ 174.2 [Amended]

127. Section 174.2 is amended by revoking the following definitions: "Commissioner," "Nonprofit institution," and "State."

PART 175—COLLEGE WORK-STUDY AND JOB LOCATION AND DEVELOPMENT PROGRAM

§ 175.2 [Amended]

128. Section 175.2 is amended by revoking the definitions of "Commissioner," "Nonprofit institutions," and "State."

PART 176—SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

§ 176.2 [Amended]

129. Section 176.2 is amended by revoking the definitions of "Commissioner," "Nonprofit institutions," and "State."

PART 177—FEDERAL, STATE, AND PRIVATE PROGRAMS OF LOW-INTEREST LOANS TO VOCATIONAL STUDENTS AND STUDENTS IN INSTITUTIONS OF HIGHER EDUCATION

§ 177.1 [Amended]

130. Section 177.1 is amended by revoking paragraph (q).

PART 178—STUDENT CONSUMER INFORMATION SERVICES

§ 178.7 [Amended]

131. Section 178.7 is amended by revoking paragraph(a).

PART 178a—INCENTIVE GRANTS FOR STATE STUDENT FINANCIAL ASSISTANCE TRAINING PROGRAM

§§ 178a.7, 178a.10 [Revoked]

§§ 178a.1, 178a.2 [Amended]

132. The following text is revoked: § 178a.1(b); the definition of "State" in §§ 178a.2; 178a.7; and 178a.10.

133. A new § 178a.1–1 is added to read as follows:

§ 178a.1–1 Regulations that apply to the Incentive Grants for State Student Financial Assistance Training Program.

(a) *Regulations.* The following regulations apply to the Incentive Grants for State Student Financial Assistance Training Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100b (State-Administered Programs) and Part 100c (Definitions).

(2) The regulations in this Part 178a.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e–3(a)(1))

PART 179—GRADUATE AND PROFESSIONAL STUDY FELLOWSHIPS AND INSTITUTIONAL GRANTS

§§ 179.27, 179.28 [Revoked]

§§ 179.3, 179.4, 179.23, 179.25 [Amended]

134. The following text is revoked: §§ 179.3(i); 179.4(c); 179.23(c); 179.25 (c) and (d); 179.27; and 179.28.

135. A new § 179.20 is added to Subpart B, to read as follows:

§ 179.20 Regulations that apply to the Institutional Grants Program.

(a) *Regulations.* The following regulations apply to the Institutional Grants Programs:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Subpart B.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e–3(a)(1))

136. Section 179.53 is amended by revising paragraph (a) to read as follows:

§ 179.53 Records and reports.

(a) Each institution of higher education that receives an allocation of fellowships under this part shall make the reports that are required by 45 CFR 74.82

* * * * *

PART 180—DESEGREGATION OF PUBLIC EDUCATION

§§ 180.03, 180.16, 180.34, 180.54, 180.63 [Revoked]

§§ 180.20, 180.57, 180.65, 180.73 [Amended]

137. The following text is revoked: the definition of "State educational agency" in §§ 180.03; 180.16; 180.20(c); 180.34; 180.54; 180.57(b); 180.63; 180.65(b); and 180.73(b) (3), (5), and (6).

138. Section 180.01 is revised to read as follows:

§ 180.01 Purpose.

The purpose of awards under this part is to help solve problems related to the race, sex, and national origin desegregation of public elementary and secondary schools.

(42 U.S.C. 2000c–2000c–5)

139. Section 180.02 is revised to read as follows:

§ 180.02 Regulations that apply to the Desegregation of Public Education program.

(a) The regulations in this Part 180 govern grants under the Desegregation of Public Education program.

(b) Awards under this program are subject to the Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(c) 45 CFR 100a.219(a) and 100a.220, relating to the selection of certain projects for funding without competition do not apply to any award under this program.

(d) The following provisions of EDGAR do not apply to Race, Sex, and National Origin Desegregation Assistance Centers under Subpart C:

(1) 45 CFR 100a.250(a), 100a.253 (a), (b) and (d), and 100a.254(a), relating to approval of continuation awards.

(2) Section 100a.232(b) and 100a.233, relating to the amount of a grant.

(e) The provisions of 45 CFR 100a.217 and 100a.219(c) of EDGAR, relating to the selection of projects, do not apply to Special Grants to School Boards for Race and National Origin Desegregation under Subpart F.

(20 U.S.C. 1221e–3(a)(1); 42 U.S.C. 2000c–2000c–5)

PART 182—COOPERATIVE EDUCATION PROGRAMS

§§ 182.5, 182.6, 182.13, 182.34 [Revoked]

§§ 182.18, 182.19 [Amended]

140. The following text is revoked: §§ 182.5; 182.6; 182.13; 182.18(a)(3) and (b); 182.19 (a), (c), (d), and (e); and 182.34.

141. Section 182.4 is revised to read as follows:

§ 182.4 Regulations that apply to the Cooperative Education Programs.

(a) *Regulations.* The following regulations apply to the Cooperative Education Programs:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Part 182.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e-3(a)(1))

PART 182a—NATIONAL ALCOHOL AND DRUG ABUSE PREVENTION PROGRAM

§§ 182a.1, 182a.2, 182a.13, 182a.13, 182a.23, 182a.24 [Amended]

142. The following text is revoked: §§ 182a.1(d); 182a.2 (e) and (f); 182a.13 (a) and (c)(2) and (3); 182a.23(a); and 182a.24(b).

143. A new § 182a.1–1 is added to read as follows:

§ 182a.1–1 Regulations that apply to the National Alcohol and Drug Abuse Prevention Program.

(a) *Regulations.* The following regulations apply to the National Alcohol and Drug Abuse Prevention Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Part 182a.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e-3(a)(1))

144. Section 182a.13 is amended by revising paragraph (d) to read as follows:

§ 182a.13 Application requirements.

* * * * *

(d) An applicant local educational agency shall give its State educational agency an opportunity to comment on its application.

(21 U.S.C. 1002)

145. Section 182a.24 is amended by revising the introductory text to paragraph (a) to read as follows:

§ 182a.24 Application requirements.

(a) An application must contain the following information:

* * * * *

PART 189—VETERANS' COST-OF-INSTRUCTION PAYMENTS TO INSTITUTIONS OF HIGHER EDUCATION

§§ 189.4, 189.31, 189.32, 189.33, 189.34, 189.35 [Revoked]

§§ 189.1, 189.21 [Amended]

146. The following text is revoked: the definition of "State" in §§ 189.1; 189.4; 189.21(a); 189.31; 189.32; 189.33; 189.34; and 189.35.

147. A new § 189.1–1 is added to read as follows:

§ 189.1–1 Regulations that apply to the Veterans' Cost-of-Instruction Payments to Institutions of Higher Education Program.

(a) *Regulations.* The following regulations apply to the Veterans' Cost-of-Instruction Payments to Institutions of Higher Education Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Part 189.

(b) The selection criteria in EDGAR, 45 CFR 100a.202–100a.206, do not apply to this program.

(c) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e-3(a)(1))

148. Section 189.21 is amended by revising the introductory text to paragraph (b) and by deleting paragraph (b)(3) as follows:

§ 189.21 Submission of application by individual institutions.

* * * * *

(b) An application must contain the following:

* * * * *

(3) (Deleted)

* * * * *

149. Section 189.22 is revised to read as follows:

§ 189.22 Submission of applications by parties to consortium agreements.

Each institution proposing to carry out the activities required under this part through a consortium agreement, under § 189.15, shall provide all information and assurances required under § 189.21, as well as information and assurances necessary to a finding by the Commissioner that the conditions for a consortium agreement in § 189.15 have been met.

(20 U.S.C. 1070e–1)

PART 190—BASIC EDUCATIONAL OPPORTUNITY GRANT PROGRAM

§ 190.2 [Amended]

150. The following definitions in § 190.2 are revoked: "Commissioner," "Nonprofit institution," and "State."

PART 191—GUIDANCE AND COUNSELING

§§ 191.34, 191.36, 191.46, 191.47, 191.48 [Revoked]

§§ 191.12, 191.25, 191.35 [Amended]

151. The following text is revoked: §§ 191.12(c), (f), (g), (h), (i), (j), and (m); 191.25(b); 191.34; 191.35(a); 191.36; 191.46; 191.47; and 191.48.

152. Section 191.10 is revised to read as follows:

§ 191.10 Regulations that apply to the Guidance and Counseling Program.

(a) *Regulations.* The following regulations apply to the Guidance and Counseling Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Part 191.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e–3(a)(1))

153. Section 191.31 is amended by revising the introductory text and paragraph (a), (c)(1)(i), and (iii) and by deleting (b), (c)(1)(ii), (v)–(x) and (c)(3) as follows:

§ 191.31 Content of application.

An application must include—

(a) Identification of the purpose and the type of activity—such as training or improved supervisory services—to which the application is addressed;

(b) [Deleted]

(c)(1)(i) A description of the needs of prospective participants for the project, in relation to the needs of students served by these participants, and a description of how the needs were determined;

(ii) [Deleted]

(iii) Information on the size, scope, and duration of the proposed project;

* * * * *

(v) [Deleted]

(vi) [Deleted]

(vii) [Deleted]

(viii) [Deleted]

(ix) [Deleted]

(x) [Deleted]

* * * * *

(3) [Deleted]

154. Section 191.32 is revised to read as follows:

§ 191.32 State review of application.

Each applicant under this subpart must give an opportunity to comment on its application to the State educational agency of each State in which is located the agency or organization to be served under a project for improving supervisory services or in which the prospective trainees are employed, as applicable.

(20 U.S.C. 2533(a)(3), 2534(a))

155. Section 191.44 is amended by revising the introductory text, paragraph (b)(1)(i) and by deleting paragraphs (a), (b)(1)(ii)–(iii), (v)–(ix) and (b)(2) as follows:

§ 191.44 Required application data.

An application must include—

(a) [Deleted]

(b)(1)(i) A description of the needs to be met by the proposed plan; e.g., the need to reduce duplication of efforts in guidance and counseling in the State;

(ii) [Deleted]

(iii) [Deleted]

(iv) * * *

(v) [Deleted]

(vi) [Deleted]

(vii) [Deleted]

(viii) [Deleted]

(ix) [Deleted]

(2) [Deleted]

PART 192—STATE STUDENT INCENTIVE GRANT PROGRAM

§§ 192.11, 192.12 [Revoked]

§§ 192.2, 192.3, 192.10 [Amended]

156. The following text is revoked: the definitions of "Nonprofit" and "State" in §§ 192.2; 192.3(b), (c), (g), and (i); 192.10(b); 192.11; and 192.12.

157. A new § 192.1–1 is added to read as follows:

§ 192.1–1 Regulations that apply to the State Student Incentive Grant Program.

(a) *Regulations.* The following regulations apply to the State Student Incentive Grant Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100b (State-Administered Programs) and Part 100c (Definitions).

(2) The regulations in this Part 192.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e–3(a)(1))

PART 194—PUBLIC SERVICE EDUCATION PROGRAM

§§ 194.1, 194.5, 194.7 [Revoked]

158. The following text is revoked: the definition of "Project" in §§ 194.1; 194.5(a) and (c); and 194.7(c) and (d).

159. Section 194.2 is revised to read as follows:

§ 194.2 Regulations that apply to the Public Service Institutional Grants Program.

(a) *Regulations.* The following regulations apply to the Public Service Institutional Grants Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Subpart A.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e–3(a)(1))

160. A new § 194.20 is added to Subpart B, to read as follows:

§ 194.20 Regulations that apply to the Public Services Fellowships Program.

The following regulations apply to the Public Services Fellowships Program:

(a) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100c (Definitions).

(b) The regulations in this Subpart B.

(20 U.S.C. 1221e–3(a)(1))

PART 196—DOMESTIC MINING AND MINERAL AND MINERAL FUEL CONSERVATION FELLOWSHIPS

161. A new § 196.1–1 is added to read as follows:

§ 196.1–1 Regulations that apply to the Domestic Mining and Mineral and Mineral Fuel Conservation Fellowships Program.

(a) *Regulations.* The following regulations apply to the Domestic Mining and Mineral and Mineral Fuel Conservation Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100c (Definitions).

(2) The regulations in this Part 196.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Divison programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e–3(a)(1))

PART 197—TEACHER CENTERS PROGRAM

§ 197.7 [Revoked]

§§ 197.1, 197.2, 197.8, 197.9 [Amended]

162. The following text is revoked: §§ 197.1(a); the definitions of "Local educational agency," "Non-public school," and "State educational agency" in §§ 197.2; 197.7; 197.8(a)(1), (2), (3), and (6) and (b); the 1st sentence in 197.9; and 197.9(a)(4) and (5)(ii).

163. A new § 197.1–1 is added to read as follows:

§ 197.1–1 Regulations that apply to the Teacher Centers Program.

(a) *Regulations.* The following regulations apply to the Teacher Centers Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Part 197.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e–3(a)(1))

PART 198—TRAINING FOR HIGHER EDUCATION PERSONNEL

§ 198.8 [Revoked]

§§ 198.1, 198.4, 198.6 [Amended]

164. The following text is revoked: §§ 198.1(a); 198.4(a)(2) and (b)(3); the 1st sentence in 198.6 and 198.6(c); and 198.8.

165. A new § 198.1–1 is added to read as follows:

§ 198.1–1 Regulations that apply to the Training for Higher Education Personnel Program.

(a) *Regulations.* The following regulations apply to the Training for Higher Education Personnel Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Part 198.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e-3(a)(1))

PART 199a—STATE POSTSECONDARY EDUCATION

166. Section 199a.3 is revised to read as follows:

§ 199a.3 Regulations that apply to the State Postsecondary Education Program.

(a) *Regulations.* The following regulations apply to the State Postsecondary Education Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100b (State Administered Programs) and Part 100c (Definitions).

(2) The regulations in this Part 199a.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division Programs" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e-3(a)(1))

PART 1400—GENERAL

§§ 1400.4, 1400.5 [Revoked]

§ 1400.3 [Amended]

167. The following text is revoked: §§ 1400.3(b); 1400.4; and 1400.5.

168. Section 1400.1 is revised to read as follows:

§ 1400.1 Definitions.

As used in this chapter—"Council" means the National Council on Educational Research; "Director" means the Director of the National Institute of Education.

"Educational research" means research (basic and applied), planning, surveys, evaluations, investigations, experiments, developments, and demonstrations in the field of education (including career education).

"Institute" means the National Institute of Education.

169. Section 1400.2 is revised to read as follows:

§ 1400.2 Regulations that apply to programs of the National Institute of Education.

(a) *Regulations.* The following regulations apply to programs of the National Institute of Education:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Chapter XIV.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e-3(a)(1))

PART 1403—ELIGIBILITY AND APPLICATION FOR RESEARCH GRANT ASSISTANCE

§§ 1403.1, 1403.4, 1403.5, 1403.7, 1403.9, 1403.11, 1403.13, and 1403.15 [Revoked]

§ 1403.10 [Amended]

170. The following text is revoked: §§ 1403.1; 1403.4; 1403.5; 1403.7; 1403.9; 1403.10(a); 1403.11; 1403.13; and 1403.15.

171. Section 1403.2 is revised to read as follows:

§ 1403.2 Eligibility for award.

(a) *Persons eligible.* Except as otherwise prohibited by law, any individual and any public or nonprofit private organization, institution, or agency found by the Director to be authorized and qualified by educational, scientific, or other relevant competence to carry out a proposed research project shall be eligible for an award.

(b)(1) *Projects eligible.* Any project found by the Director to be an educational research project within the meaning of § 1400.1 of this subchapter shall be eligible for an award.

(2) An eligible project may include planning, laboratory, clinical, population, field, statistical, basic, applied or other type of investigation, study, or experiment, dissemination, use, application, implementation, training, development or demonstration, or combinations of those.

(3) An eligible project may either—

(i) Be limited to one—or a particular aspect of a—problem or subject; or

(ii) Consist of two or more related problems or subjects for concurrent or consecutive investigation and involving multiple disciplines, facilities, and resources.

PART 1405—FEDERAL FINANCIAL PARTICIPATION [REVOKED]

172. Part 1405 is revoked.

PART 1407—COST SHARING [REVOKED]

173. Part 1407 is revoked.

PART 1409—GRANT RELATED INCOME [REVOKED]

174. Part 1409 is revoked.

PART 1410—MISCELLANEOUS REQUIREMENTS

§§ 1410.1, 1410.2, 1410.3, 1410.10, 1410.14, 1410.15, 1410.16, 1410.19, 1410.21 [Revoked]

175. The following text is revoked: §§ 1410.1; 1410.2; 1410.3; 1410.10; 1410.14; 1410.15; 1410.16; 1410.19; and 1410.21.

176. Section 1410.7 is revised to read as follows:

§ 1410.7 Principal investigators.

(a) All grants shall be subject to the condition that the principal investigator(s) designated in the application as responsible for the conduct of the approved project shall continue to be responsible for the duration of the project period.

(b) When an investigator referred to in paragraph (a) of this section is absent for three months or longer or otherwise becomes unavailable to discharge this responsibility, the Director may terminate the grant, unless the grantee replaces the investigator with another person found by the Director to be qualified to direct and conduct the approved project.

PART 1412—MONITORING AND REPORTING PERFORMANCE [REVOKED]

177. Part 1412 is revoked.

PART 1414—PROCUREMENT STANDARDS FOR GRANTEES [REVOKED]

178. Part 1414 is revoked.

PART 1415—PROPERTY MANAGEMENT STANDARDS [REVOKED]

179. Part 1415 is revoked.

PART 1417—FINANCIAL MANAGEMENT STANDARDS [REVOKED]

180. Part 1417 is revoked.

PART 1419—FINANCIAL REPORTING REQUIREMENTS [REVOKED]

181. Part 1419 is revoked.

PART 1420—BONDING AND INSURANCE [REVOKED]

182. Part 1420 is revoked.

PART 1422—CONSTRUCTION [REVOKED]

183. Part 1422 is revoked.

PART 1424—ACCOUNTABILITY FOR FEDERAL FUNDS [REVOKED]

184. Part 1424 is revoked.

PART 1430—EXPERIMENTAL PROGRAM FOR OPPORTUNITIES IN ADVANCED STUDY AND RESEARCH IN EDUCATION

§§ 1430.9, 1430.11, 1430.13 [Revoked]

§§ 1430.4, 1430.6 [Amended]

185. The following text is revoked: §§ 1430.4(b); 1430.6(g); 1430.9; 1430.11; and 1430.13.

186. Section 1430.1 is revised to read as follows:

§ 1430.1 Regulations that apply to the Experimental Program for Opportunities in Advanced Study and Research in Education.

(a) *Regulations.* The following regulations apply to the Experimental Program for Opportunities in Advance Study and Research in Education:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The general provisions for NIE grants in 45 CFR Parts 1400–1410.

(3) The regulations in this Part 1430.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e–3(a)(1))

187. Section 1430.12 is amended by revoking paragraphs (a), (b), and (c) and by revising the introductory text to paragraph (d), to read as follows:

§ 1430.12 Allowable costs.

(a) (Deleted)

(b) (Deleted)

(c) (Deleted)

(d) Allowable costs include—

(1) (Deleted)

(2) (Deleted)

* * * * *

PART 1450—RESEARCH GRANTS PROGRAM

§ 1450.8 [Revoked]

§ 1450.4 [Amended]

188. The following text is revoked: §§ 1450.4 (2nd sentence only) and 1450.8.

189. Section 1450.1 is revised to read as follows:

§ 1450.1 Regulations that apply to the Research Grants Program.

(a) *Regulations.* The following regulations apply to the Research Grants Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The general provisions for NIE grants in 45 CFR Parts 1400–1410.

(3) The regulations in this Part 1450.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e–3(a)(1))

190. Section 1450.5 is amended by revising paragraphs (a)(1), (b), and (c) and removing paragraph (a)(2) to read as follows:

§ 1450.5 Applications.

(a) * * *

(1) *Preapplication.* (i) The applicant shall submit a preapplication for initial review. Only preapplications prepared according to the format described in paragraphs (b) or (c) of this section will be accepted at this initial stage; other submissions will be returned to the applicant.

(ii) No more than one preapplication per individual will be accepted. Although an institutional applicant may submit more than one preapplication, no more than one preapplication per each principal investigator will be considered. In the event that more than one preapplication per individual or principal investigator is received, the preapplication received earlier will be accepted, and subsequent preapplications will be returned to the applicant.

(2) (Deleted)

(b) *Preapplication format.* With respect to applicants other than State and local governments, the preapplication shall include the following:

(1) A cover sheet completed by the principal investigator indicating—

(i) That the preapplication is submitted to the Research Grants Program of the National Institute of Education;

(ii) The title of the study;

(iii) The category of study under which the applicant believes the project should be reviewed as described in § 1450.6(a);

(iv) The name(s), department, institution, address, and telephone number of the principal investigator(s);

(v) The estimated budget amount; and

(vi) The proposed duration and starting date of the project.

(2) A statement of from three to five double-spaced, typewritten pages summarizing the proposed project, including—

(i) *Description and rationale.* A description of the proposed research, its relation to what is already known and to the problems of American education, and the importance of the expected addition to knowledge; and

(ii) *Procedures.* A description of the procedures to be followed in carrying out the research, including, if appropriate, such concerns as sampling, data acquisition, instrumentation, and data analysis.

(3) A description of facilities and arrangements available to the investigator for conducting the research.

(4) Resume(s) of principal investigator(s), including education, applicable experience, and a list of major publications.

(5) An estimated budget covering direct costs (salaries and benefits, travel, supplies and materials, communication, services, equipment) and indirect costs proposed to be charged against the grant.

(c) *Government preapplications.* Preapplications from governments are subject to the requirements in Subpart N of 45 CFR Part 74.

191. Section 1450.6(a) and (b) is revised to read as follows:

§ 1450.6 Review of applications.

(a) *Review categories.* To facilitate and improve the quality of review of applications by the National Institute of Education, each preapplication and invited full proposal received will be assigned to one of the following categories and will be reviewed together with other applications within the same category:

(1) Learning and instruction.

(2) Human development.

(3) Objectives, measurement, evaluation, and research methodology.

(4) Social thought and processes.

(5) Organization and administration.

(6) Anthropology.

(7) Economics.

(8) Political science.

(9) Legal research.

(b) *Selected issues.* The Institute may periodically identify selected issues of particular significance for American education that will serve as conditions of eligibility or with respect to which priority funding consideration will be given.

* * * * *

§ 1450.7 [Amended]

192. Section 1450.7(b) is amended by deleting the word "prospectus" and

inserting, instead, the word "preapplication."

PART 1451—BASIC SKILLS RESEARCH GRANTS PROGRAM

§§ 1451.7, 1451.8 [Revoked]

§ 1451.4 [Amended]

193. The following text is revoked: §§ 1451.4 (a) and (b) (2nd and 3rd sentences only); 1451.7; and 1451.8.

194. Section 1451.1 is revised to read as follows:

§ 1451.1 Regulations that apply to the Basic Skills Research Grants Program.

(a) *Regulations.* The following regulations apply to the Basic Skills Research Grants Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The general provisions for NIE grants in 45 CFR Parts 1400–1410.

(3) The regulations in this Part 1451.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e–3(a)(1))

PART 1460—STATE DISSEMINATION GRANTS PROGRAM

§ 1460.3 [Amended]

195. The definition of "State educational agency" in § 1460.3 is revoked.

196. Section 1460.1 is revised to read as follows:

§ 1460.1 Regulations that apply to the State Dissemination Grants Program.

(a) *Regulations.* The following regulations apply to the State Dissemination Grants Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The general provisions for NIE grants in 45 CFR Parts 1400–1410.

(3) The regulations in this Part 1460.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e–3(a)(1))

197. Section 1460.4 is amended by revising paragraphs (c), (f), (h) and by deleting (a), (d)(3), (e), and (g) as follows:

§ 1460.4 Applicant eligibility.

(a) (Deleted)

* * * * *

(c) A State educational agency (SEA) may submit as many applications as it wishes for intra-State projects but may submit or (under paragraph (d)(1)(i) of this section) participate in only one inter-State project application.

(d) * * *

(3) (Deleted)

(e) (Deleted)

(f)(1) An SEA will receive no more than one award (including any joint award) under each application notice published under § 100a.100 of EDGAR.

(2) An SEA that receives an intra-State award may also participate in one inter-State award to another SEA, as provided in paragraph (d)(1)(i) of this section, under each application notice published under § 100a.100 of EDGAR.

(g) (Deleted)

(h) Any SEA that submits more than one application under paragraph (c) of this section—or that both submits an application or applications and participates in another application submitted by another SEA under paragraph (d) of this section—must rank all of the applications in priority order.

198. Section 1460.5 is amended by revising paragraph (b)(1) and deleting (b)(2) as follows:

§ 1460.5 Types of awards; funding requirements.

* * * * *

(b) * * *

(1) Awards shall not support the salaries of full-time professional or clerical staff.

(2) (Deleted)

* * * * *

PART 1470—EDUCATION AND WORK GRANTS PROGRAM

§ 1470.8 [Revoked]

§ 1470.4, 1470.7 [Amended]

199. The following text is revoked: §§ 1470.4 (a) and (b) (2nd and 3rd sentences only); 1470.7(a), (b) (1) and (2), and (c) (2), (3), and (4); and 1470.8.

200. Section 1470.1 is revised to read as follows:

§ 1470.1 Regulations that apply to the Education and Work Grants Program.

(a) *Regulations.* The following regulations apply to the Education and Work Grants Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The general provisions for NIE grants in 45 CFR Parts 1400–1410.

(3) The regulations in this Part 1470.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e–3(a)(1))

PART 1480—PROGRAM OF RESEARCH GRANTS ON ORGANIZATIONAL PROCESSES IN EDUCATION

§ 1480.10 [Revoked]

§ 1480.4 [Amended]

201. The following text is revoked: §§ 1480.4(b) and 1480.10.

202. Section 1480.1 is revised to read as follows:

§ 1480.1 Regulations that apply to the Program of Research Grants on Organizational Processes in Education.

(a) *Regulations.* The following regulations apply to the Program of Research Grants on Organizational Processes in Education:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The general provisions for NIE grants in 45 CFR Parts 1400–1410.

(3) The regulations in this Part 1480.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e–3(a)(1))

203. Section 1480.8 is amended by revising paragraph (a), (b)(2)(i)(A), introductory text to (b)(4), (b)(4)(vii) and by deleting paragraphs (b)(3), (b)(4)(i)–(iii), (vi), (x), and (d) as follows:

§ 1480.8 Application requirements.

(a) *General.* An applicant shall file an application specificially directed to either the grant or small grant segment of the Program of Research on Organizational Processes in Education.

(b) * * *

(2) *Preapplication format.* The preapplication must include the following:

(i) A cover sheet completed by the principal investigator and by an individual authorized to complete grant applications for the institution, indicating—

(A) That the preapplication is submitted to the Program of Research Grants on Organizational Processes in Education, National Institute of Education; and

* * * * *

(3) (Deleted)

(4) *Full proposal format.* Full proposals must include the following elements. Discussion of objectives and design, described under paragraphs (b)(4)(iv) and (v) of this section, may not exceed 40 pages.

(i) (Deleted)

(ii) (Deleted)

(iii) (Deleted)

* * * * *

(vi) (Deleted)

(vii) If new data are proposed to be collected, the proposal must give evidence of access to suitable organizations for study purposes. Letters of agreement to participate must be included, showing that relevant authorities in school or school-related organizations have reviewed the research plans and agree to take part willingly. A lengthy and complex study that could place special burdens on parts of the educational community may require joint planning and management of the entire project. A proposal for that type of a study must give detailed information to allow reviewers to judge the adequacy of the arrangement.

* * * * *

(x) (Deleted)

* * * * *

(d) (Deleted)

PART 1490—EDUCATIONAL EQUITY RESEARCH GRANTS PROGRAM

§§ 1490.7, 1490.9 [Revoked]

§ 1490.4 [Amended]

204. The following text is revoked: §§ 1490.4(b); 1490.7; and 1490.9.

205. Section 1490.1 is revised to read as follows:

1490.1 Regulations that apply to the Educational Equity Research Grants Program.

(a) *Regulations.* The following regulations apply to the Educational Equity Research Grants Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The general provisions for NIE grants in 45 CFR Parts 1400–1410.

(3) The regulations in this Part 1490.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e–3(a)(1))

PART 1495—LAW AND GOVERNMENT STUDIES IN EDUCATION

§§ 1495.7, 1495.10, 1495.12 Appendix B [Amended]

206. The following text is revoked: §§ 1495.7(b); 1495.10 (b), (c), and (d); 1495.12; in Appendix B, paragraphs (a) (1), (2), (3), (6), (7) (1st sentence only), (9), and (10) and (b); and in Appendix C, paragraphs (a) (1), (2), and (3) and (b).

207. Section 1495.1 is revised to read as follows:

§ 1495.1 Regulations that apply to the Law and Government Studies in Education Program.

(a) *Regulations.* The following regulations apply to the Law and Government Studies in Education Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grants Programs) and Part 100c (Definitions).

(2) The general provisions for NIE grants in 45 CFR Parts 1400–1410.

(3) The regulations in this Part 1495.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e–3(a)(1))

208. Section 1495.9 is amended by revising paragraphs (a), the introductory text of paragraph (b), (b)(1) and (c) and by deleting (b)(2) as follows:

§ 1495.9 Application requirements.

(a) *General.* An applicant shall file an application specifically directed to either the major grant or the small grant segment of the program.

(b) *Major grants.* An applicant for a major grant shall comply with the requirements contained in this paragraph and in Appendices A and B.

(1) *Preapplications.* An applicant shall submit a preapplication for initial review in the format prescribed in Appendix A.

(2) (Deleted)

(c) *Small grants.* An applicant for a small grant shall comply with the requirements contained in Appendix C. An applicant for a small grant does not have to submit a preapplication.

209. Appendix A to Part 1495 is amended by revising the introductory text to paragraph (a), and (a)(1) and by deleting paragraph (a)(2) and (b) as follows:

Appendix A: Administrative Details for a Preapplication for a Major Grant

(a) *Preapplication format.* This appendix provides guidance to applicants concerning the preparation of preapplications for major grants. An applicant that does not follow these suggestions will not be ruled ineligible, but may not be ranked as highly under the evaluation criteria. The statement summarizing the project, paragraph (2) below, must not exceed 10 double-spaced, typewritten pages. The preliminary proposal should include the following:

(1) A cover sheet completed by the applicant or principal investigator—and, if required by the applicant institution, by an individual authorized to complete grant applications for the institution—indicating—

(i) That the preapplication is submitted to the Program of Research Grants on Law and Government Studies in Education, NIE;

(ii) The title of the study;

(iii) The name, department, institution, address, and telephone number of each proposed grantee or principal investigator;

(iv) The estimated budget amount; and

(v) The proposed starting date and duration of the project.

(2) * * *

(b) (Deleted)

PART 1501—FUND FOR THE IMPROVEMENT OF POSTSECONDARY EDUCATION

§ 1501.11 [Revoked]

§§ 1501.3, 1501.5 [Amended]

210. The following text is revoked: The definitions of "Fiscal year," "Nonexpendable personal property," "Nonprofit," "Personal property," "Private," "Public," " Recipient," and "State" in §§ 1501.3; 1501.5 (2nd and 3rd sentences only); and 1501.11.

211. Section 1501.2 is revised to read as follows:

§1501.2 Regulations that apply to the Support for Improvement of Postsecondary Education Program.

(a) *Regulations.* The following regulations apply to the Support for

Improvement of Postsecondary Education Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Part 1501.

(b) *Exceptions to EDGAR.* The following regulations in EDGAR do not apply to this program:

(1) 45 CFR 100a.201(a) (How to use unweighted selection criteria).

(2) 45 CFR 100a.217(a)(2) (Requiring three or more persons to review applications).

(c) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1221e-3(a)(1))

212. Section 1501.10 is amended by revising the introductory text to paragraphs (c) and (d), by revising paragraph (d)(2), and by deleting paragraphs (a), (b), (d)(4), (e), (f), (g), and (i) as follows:

§ 1501.10 Application procedures.

(a) (Deleted)

(b) (Deleted)

(c) A preapplication must contain the following information:

* * * * *

(d) An application must contain the information required by EDGAR 45 CFR 100a.107 (Applications for new grants under discretionary grant programs) and the following additional information:

* * * * *

(2) A description of the proposed project, including: its methodology; qualifications of the persons who would conduct it; its short-term and long-term objectives; its specific allocation of available funds in the form of a budget; and the resources (facilities, equipment, and supplies) that the applicant plans to devote to the project.

* * * * *

(4) (Deleted)

(e) (Deleted)

(f) (Deleted)

(g) (Deleted)

* * * * *

(i) (Deleted)

Note.—This Appendix A for Parts 100a–100d will not be published in Title 45 of the Code of Federal Regulations

Appendix A—Analysis of Public Comments and Changes in the Final Regulations

The following is a summary of public comments concerning the EDGAR notice of proposed rulemaking (NPRM) published in the Federal Register on May 4, 1979. Summary is divided into three sections.

The first section, headed "Major Issues," considers the general comments received on five major issues discussed as part of the supplementary information published with the NPRM.

The second section of the summary, headed "General Comments," considers a number of comments and suggestions concerning EDGAR's general approach, format, applicability, timeliness, and similar matters.

The third section, headed "Proposed Rules," concerns comments and suggestions directed to specific sections of EDGAR. The comments and responses in this third section are organized in the same order as the referenced sections are organized in the final EDGAR.

Discussion in the section on "Proposed Rules" includes a number of specific suggestions not directly related to a major issue but directed at sections of EDGAR that address a major issue.

This summary does not include comments that did not suggest how EDGAR should be changed. Nor does it include comments that concern issues beyond the scope of EDGAR, such as provisions in individual program regulations or the General Education Provisions Act (GEPA). Where appropriate, comments that concern issues outside the scope of EDGAR have been referred to the offices within the Department of Health, Education, and Welfare (HEW).

A number of commenters made suggestions regarding the organization of EDGAR or recommended other kinds of technical improvements. A number of these suggestions have been adopted. Some technical revisions also have been made in the language of the regulations. Any change that alters the meaning of a provision of these regulations is summarized—together with the reasons for that revision—in the section headed "Proposed Rules."

Major Issues

Five major policy issues were identified and discussed in the supplementary information published with the NPRM. Many of the comments received and considered by the Education Division in the development of the final regulations were directed to these issues. Comments and suggestions relative to the five issues and the Education Division's responses to them are presented here in the same order as the issues were presented in the NPRM.

Issue: Should EDGAR establish regulations having particular applicability to persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly?

The central purpose of these particular regulations would be to reflect the Education Division's concern that members of traditionally underrepresented groups be provided appropriate opportunities for equitable representation and participation in the planning, operation, and evaluation of projects under grant programs administered by the Education Division.

Comment. A large number of comments were received on this issue. Some commenters suggested that EDGAR not establish regulations having particular applicability to members of traditionally underrepresented groups. Other commenters suggested that the regulations of this type proposed in the NPRM for direct grant programs (Part 100a) be broadened to apply to State-Administered (Part 100b) programs and to include members of groups not mentioned in the examples given. Some commenters suggested that a separate selection criterion be added to give specific emphasis to the selection and funding of projects (1) directed to serving members of traditionally underrepresented groups; or (2) having a project staff that is balanced in terms of members of underrepresented groups. Some commenters suggested that EDGAR encourage grant proposals from women and one commenter said advisory council membership should be evenly divided between men and women.

A number of commenters said the proposed regulations should be retained in EDGAR. Still others said the existing policy of requiring applicants to give assurances of compliance with relevant civil rights statutes and regulations is adequate and nothing else should be added. At least one commenter suggested discontinuing even the assurances required by existing policy. Several commenters asked that the terms "racial or ethnic minorities," "handicapped persons," and "the elderly" be defined.

Commenters who suggested that EDGAR not include regulations regarding members of traditionally underrepresented groups argued that the proposed regulations would—

a. Duplicate Federal and State requirements regarding compliance with applicable civil rights statutes and regulations;

b. Result in divergent program determinations of civil rights compliance requirements, making it impossible for applicants and grantees to use uniform policies in applying for and administering Education Division grants;

c. Result in directing a grant service to persons that the authorizing legislation did not intend to be targets of that service or to persons only incidentally or peripherally involved in the activity or service; and

d. Increase burdens on applicants and grantees by requiring (1) additional information in applications, (2) greater effort to encourage public participation in project planning, and (3) special actions in other areas, including evaluation.

Commenters who suggested that EDGAR include at least the regulations proposed in the NPRM or that those regulations be strengthened or broadened argued that—

a. Existing policies have been ineffective in achieving satisfactory compliance with relevant civil rights statutes and regulations;

b. Relevant civil rights statutes and regulations should be reflected in the regulations that govern administration of Federal educational assistance programs;

c. Regulations are necessary to make sure that everyone concerned with a Federal program and its operation is aware of the relevant civil rights statutes; and

d. There should be both pre-award and post-award determinations of compliance with appropriate civil rights statutes and regulations in order to assure that Federal funds are provided only to grantees who are in compliance with those statutes and regulations.

Response. Certain changes have been made, but the basic policy represented by the NPRM—that EDGAR should contain some special provisions for members of traditionally underrepresented groups—has not been changed. Many of the comments and suggestions were incorrect in their assumption that the relevant provisions of EDGAR are intended to enforce compliance with applicable civil rights statutes. The basic purpose of the provisions is to make applicants and grantees aware that all eligible groups are to receive equitable treatment and consideration in the administration of Education Division programs and the conduct of projects under these programs, regardless of whether the members of those groups are provided special protection or rights by Federal statutes.

Enforcement of applicable civil rights statutes and regulations is presently the responsibility of the Office for Civil Rights, HEW. The EDGAR Provisions do not give Education Division program personnel any responsbility or authority to determine compliance with civil rights requirements; these determinations will continue to be made by the Office for Civil Rights or its successor agency. (The functions of the HEW Office for Civil Rights that are concerned with education will be transferred to the new Department of Education.) The EDGAR provisions do not duplicate Federal and State civil rights compliance requirements.

Under Part 100b States have primary responsibility for assuring that subgrantees provide equitable treatment and consideration in the operation of projects under State-administered programs, while the Education Division has similar responsibility under Part 100a. Although some commenters suggested that the EDGAR provisions on this issue in Part 100a be adapted for and included in Part 100b, the Education Division believes that responsible State authorities should retain primary authority for regulating subgrantees in this area, rather than having requirements imposed by EDGAR. For the most part, the regulations on this subject in Part 100a do not have counterparts in Part 100b (e.g., selection criteria, evaluation, etc.). This is because the State-administered programs, by statute, vest primary administrative responsibility in the State.

The EDGAR provisions do not require that grant services be directed to persons who are ineligible under the authorizing statute for a program. Rather, the EDGAR requirements are designed to help assure that applicants and grantees provide equitable consideration to all persons who are eligible under the program, including those who are members of groups that have been traditionally underrepresented.

The Education Division recognizes that the EDGAR requirements regarding members of traditionally underrepresented groups increase certain burdens on applicants and grantees. The nature and extent of these increased burdens are moderate, however. For example, the information required in an application and the analysis required in an evaluation normally would be included in any adequate description of a project or evaluation of it. Similarly, effective and positive efforts to obtain public involvement in the planning of educational programs would necessarily include the actions required by EDGAR.

After considering commenters' objections to these increased burdens, the Education Division concludes that the goal of achieving greater equity for members of traditionally underrepresented groups justifies the moderate increase in burden. The Education Division agrees with those who suggested that the proposed regulations be retained in EDGAR.

No definitions of "racial or ethnic minorities," "handicapped persons," or "the elderly" have been provided. These terms are used only as examples of "groups that have been traditionally underrepresented" and should not be viewed as either limiting or exhaustive. The basic requirement relates to groups that have been traditionally underrepresented. For this reason, applicants should first make a determination as to whether some groups in the community have traditionally been underrepresented and then seek to overcome that underrepresentation.

This consideration and associated efforts should not be directed solely to members of the groups mentioned several times in these regulations (racial or ethnic minority groups, handicapped persons, women, and the elderly), but should include other groups, if appropriate, such as cultural minorities, the poor, the young, temporary residents, or others not specifically mentioned in the regulations but, nonetheless, traditionally underrepresented in activities or programs in the local area.

The Education Division also concluded that EDGAR should not include pre-award provisions designed to assure that Federal educational assistance funds are granted only to applicants who are determined to be in compliance with applicable civil rights statutes and regulations before a grant award is made, as some commenters suggested. This is a matter that will be considered in the context of the regulations under Title VI of the Civil Rights Act and other civil rights statutes. EDGAR does not include civil rights compliance regulations, but merely references those regulations in § 100a.500 and § 100b.500 for the convenience of readers.

With regard to the proposed regulations that addressed this issue, the following changes have been made in particular sections of EDGAR:

Section 100a.110 has been renumbered as § 100a.111, a new paragraph (d) has been added, and paragraph (e) has been revised. New § 100a.107 and § 100a.108

make it clear that this section only applies to direct formula grant programs, not to discretionary grant programs. The revisions in the text of § 100a.111 make it clear that the section is intended to focus an applicant's attention on persons who are members of traditionally underrepresented groups. Subject to eligibility requirements in a program's statute and its regulations, this focus is expected to be used both in determining project beneficiaries and in designing project objectives.

Section 100a.202—the selection criterion on plan of operation—has been revised to state that an application will be evaluated in part on how the applicant plans to provide equal access and treatment to eligible project participants who are members of traditionally underrepresented groups. This change parallels the clarification in § 100a.111, and will affect all discretionary grant programs that include this criterion in their regulations.

Section 100a.206—the selection criterion on adequacy of resources—has been amended by deleting the reference to underrepresented groups. Access to facilities are better governed by the regulations regarding nondiscrimination referenced in § 100a.500 and § 100b.500. Other methods of judging "adequacy" of facilities and equipment for these groups are better regulated under individual programs, which can provide clearer and more specific guidance than general regulations.

The Education Division has not adopted suggestions for the addition of selection criteria or for the addition of requirements to encourage grant applications from women or to seek balance in project staffing or advisory councils. The EDGAR selection criterion on key personnel (§ 100a.203) seeks to assure that project staff is qualified and that members of underrepresented groups have equitable opportunities for employment by an applicant. The Education Division does not believe that additional general regulations on staffing are necessary.

As for encouraging women to apply for grants, it is Education Division policy to encourage applications from all statutorily eligible applicants rather than from preselected groups. EDGAR does not regulate on program advisory committees because of the variety of statutory provisions and programmatic needs.

The proposed requirement in § 100a.620—that grantees avoid race stereotype and sex bias in materials developed under the project—has been eliminated. Public reaction to the proposed requirement was mixed. The Secretary of Education has decided to study this issue, and therefore the provision will not be adopted at this time. If it is decided at a later date that a regulation is necessary, a notice of proposed rulemaking soliciting further public comment will be published in the **Federal Register.** However, grantees are expected to be sensitive to the necessity of avoiding inappropriate biases and stereotypes in materials developed with Federal funds.

Issue: Participation of students enrolled in private schools.

Comment. Several commenters said EDGAR should consolidate regulations on the participation of students enrolled in private schools. Other commenters said proposed EDGAR provisions on the subject should be deleted because they do not consolidate all relevant program provisions but only part of them, thus creating confusion. Commenters also suggested that the proposed EDGAR provisions establish some boundaries on public and private school responsibilities.

Other commenters said EDGAR provisions should clarify legal responsibilities and be more specific about the programs to which the proposed EDGAR regulations apply. Several asked for other forms of guidance with respect to the requirements of statutes, court decisions, and EDGAR.

Some commenters suggested that public schools are being unduly burdened by EDGAR with regard to services to students enrolled in private schools. These commenters said public schools are required to—

(a) Consult with private schools too early in the project planning process;

(b) Be fiscally responsible for private school programs;

(c) Identify times and places to provide services;

(d) Act as conduits for project proposals and funds for private school students; and

(e) Compete with private schools for grants and subgrants.

One commenter asked that direct grant programs include a selection criterion providing up to five percent of a program's selection points for equitable participation of private school students.

Response. A number of changes have been made, but the major substantive requirements of the regulations on services or responsibilities of applicants to private school students proposed in the NPRM have been retained. In two sections those requirements have been made explicit rather than left implicit. The EDGAR consolidation of these requirements should help ensure consistent Federal, State, and local policies regarding participation of private school students in the affected programs. It is expected that exceptions to these general rules can be kept to a minimum, thereby maintaining this consistency.

Under certain Federal statutes, applicants, grantees, and subgrantees are required to provide opportunities for eligible private school students to participate in Federal programs. The services provided are directed to the eligible private school students, not to the private schools they attend.

In carrying out their responsibilities, grantees and subgrantees are prohibited from serving as a conduit for Federal funds and from allowing private schools control of the Federal Funds used to provide program benefits to private school students. Under these Federal programs private schools generally are not eligible applicants, so there is no competition between them and other applicants for grants or subgrants. The requirements for identifying times and places for providing services are essentially the same requirements as apply to the involvement and participation of public school students.

On the question of applicability of the regulations, program statutes and regulations identify those programs that require that students in private schools be provided an opportunity to participate.

After considering the general comments and suggestions received, the Education Division concluded that there was a need to clarify proposed requirements concerning private school students. In addition, the EDGAR selection criteria in § 100a.202 (Plan of operation) has been amended to include consideration of private school children. (See the discussion below under § 100a.202 in the "Proposed Rules" section of this appendix.)

The responsibilities of public schools applying for direct grants have been clarified with respect to project descriptions (§ 100a.119), open meetings on applications (§ 100a.140), evaluations (§ 100a.590), and the requirement to provide "genuine opportunities" for participation (§ 100a.650). The responsibilities of public schools or of representatives of private schools have not been made more explicit, but some clarification has been provided in response to specific comments on §§ 100a.650 and 100b.650–100b.661 in the "Proposed Rules" section of this appendix.

The major clarifications are as follows:

1. Applicants must make appropriate and diligent efforts to inform and involve representatives of private school students in planning for federally assisted programs.

2. The Education Division expects applicants and recipients to seek needed information about students enrolled in private schools. This information may be provided by representatives of students enrolled in private schools, by the students themselves, or by other responsible parties. Nothing in the Education Division regulations requires any party to take actions that would be futile because of lack of information from or lack of participation by representatives of private school students. The regulations do not require consultation with representatives of private school students who do not respond to reasonable attempts to consult with them.

3. Applicants are required to consult with representatives of private school students about all aspects of the development and design of a project. Grantees and subgrantees are required to consult about any decision that may affect the participation of the private school students in a project.

Issue: Should EDGAR include general selection criteria for direct grant programs?

Comment. A number of commenters suggested that EDGAR include general selection criteria for direct grant programs. Several commenters suggested that these criteria be given standard weights in EDGAR, but some said programs should have freedom to increase or decrease the weights. Commenters also suggested that all selection criteria that apply to a particular program should be published in the regulations of that program. No commenters opposed including general selection criteria in EDGAR, although some hesitation was expressed about the use of standard weights for the criteria.

Response. No change has been made. Weighted selection criteria are retained in EDGAR. However, program regulations will repeat the EDGAR criteria, rather than merely adopt them by reference. As proposed in the NPRM, program regulations may increase the relative weights assigned to the EDGAR criteria, but may not decrease the relative weight of any criterion that is used by the program. Allowing each program to decrease the weights assigned to the EDGAR criteria would have the effect of reducing the relative importance of one or more of the criteria below the level considered minimal for it.

Issue: What should be the copyright policy of the Education Division?

Comment. Most of those who commented on this issue suggested that EDGAR allow a grantee unlimited copyright. No commenter recommended that EDGAR continue the former "limited copyright" policy of the Education Division. Of the commenters supporting the proposed new policy, many advocated the second option discussed in the NPRM: adoption of the 45 CFR Part 74 policy which permits unlimited copyright by a grantee unless otherwise provided in a particular grant. Other commenters suggested that EDGAR adopt the third option presented in the NPRM: permitting individual programs to establish their own copyright limitations through provisions in their respective program regulations. One commenter questioned the fact that EDGAR does not require a competitive process for publisher selection.

Response. No change has been made. The Education Division agrees with the commenters who said that a policy of generally allowing a grantee unlimited copyright will be more conducive to desire dissemination than the former policy of limited copyright. These commenters said the proposed policy would help a grantee deal with publishers and would allow a grantee to benefit from royalty income. Under § 100a.2, a program may establish regulations that differ from EDGAR. This section would permit a program to establish its own copyright policy if that were considered necessary for the program.

The Education Division does not believe that a competitive requirement for prospective publishers is necessary, but encourages each grantee to use care in selecting a publisher to avoid excessive costs to consumers.

Issue: Should EDGAR include regulations on "cooperative agreements?"

Comment. Several comments were received on the matter of whether EDGAR should provide special rules for cooperative agreements. Some commenters suggested that cooperative agreements be treated; others, that they not be treated. None of those who recommended treating cooperative agreements in EDGAR gave reasons to support their suggestions. Those who gave reasons that EDGAR should remain silent on cooperative agreements stated, in effect, that it would be better to wait until the Education Division has had some experience with cooperative agreements before it attempts regulations.

Response. No change has been made. EDGAR will not provide any special rules at this time. The Education Division has had little experience with cooperative agreements. Further, the Office of Management and Budget currently is conducting a congressionally mandated study of cooperative agreements, and it is expected that the outcome will provide some needed guidance. When the matter is clarified, EDGAR can be amended to include special rules for cooperative agreements, if appropriate. In the interim the general rules for grants in 45 CFR Part 74 and in EDGAR will apply to cooperative agreements. (The term "grant" is defined in 45 CFR 74.3 to include all forms of financial assistance, which would include the provision of funds under a cooperative agreement.)

General Comments

Comments. A number of commenters expressed concern that EDGAR might make it more difficult to prepare a grant application and to properly administer a project. These commenters objected to the EDGAR practice of adopting applicable statutory provisions and regulations by reference instead of repeating the pertinent statutory and regulatory language in EDGAR. One commenter summarized these objections and recommendations by saying "We want . . . all the eligibility requirements from 45 CFR Part 74, from EDGAR, from the law, from the program regulations in one place and all the application requirements in one place and all the administrative responsibilities in one place."

Response. Some changes have been made. Appropriate cross references to 45 CFR Part 74 have been added to EDGAR to make it easier for users to find relevant sections. As was done with the NPRM, a copy of 45 CFR Part 74 is appended to EDGAR for the convenience of readers. As a next step, the Education Division will begin the work necessary to incorporate the substantive text of 45 CFR Part 74 into EDGAR. The resulting combined regulations will be published in the **Federal Register** at a future date. Further, pertinent statutory requirements have been written into EDGAR, rather than being cross-referenced. These changes should serve to reduce the necessity of applicants and grantees having to refer to several documents.

The Education Division will consider further means of alleviating this problem. However, the consolidation of general grant regulations in one document, first done in the General Provisions for Office of Education

Programs in 1973, has proved to be an effective means of preventing inconsistency in program regulations that cover the same subject (rules for federally financed construction, for example). EDGAR serves this necessary function and, therefore, must be retained.

Comment. A commenter suggested that EDGAR should state where the applicant can obtain a copy of the General Education Provisions Act.

Response. No change has been made. Part VI of the Introduction to Regulations of the Education Division in the preamble to EDGAR, lists appropriate resources for persons needing information Education Division programs.

Comment. A commenter suggested that EDGAR should state that in cases in which program statutes and implementing regulations are inconsistent with EDGAR the statutory requirements and the implementing regulations for the program shall prevail.

Response. No change has been made. The provision recommended by the commenter is the system used in the current OE general provisions regulations. Under EDGAR, as stated in §§ 100a.2 and 100b.2, if statutory or regulatory requirements for a program conflict with the requirements of EDGAR, the implementing regulations for that program will identify the sections of EDGAR that do not apply. This is intended to reduce confusion as to whether an EDGAR rule applies to a particular program. Unless there is a specific exception, a reader can assume that EDGAR applies. Of course, some regulations in EDGAR are self-limiting. For example, the regulations in §§ 100b.650–100b.662 apply only if the program statute specifically requires an opportunity for participation by students enrolled in private schools.

Comment. A commenter suggested that the Education Division develop a procedure to review program regulations that conflict with EDGAR.

Response. A procedure has been established to review all program regulations to make them consistent with EDGAR. Some exceptions to EDGAR are necessary because of statutory variations among different programs or because of the nature of a particular program.

Comment. A commenter suggested that the issuance of EDGAR at this time could cause confusion if a Department of Education is established.

Response. EDGAR is being issued at this time to enable the Education Division to implement the Education Amendments of 1978, and to govern grants that will be made before the new Department of Education takes effect. Because a Department of Education has been created, EDGAR will be reviewed and necessary technical changes will be made. The Education Division believes that the consolidation of common program provisions in EDGAR will serve as a basis for further consolidation of administrative provisions that will be required for the new Department. In the meantime, EDGAR is needed to govern grants made in the current fiscal year, particularly since it implements the new general grant administration polices in 45 CFR Part 74. Under the Department of Education Organization Act (Pub. L. 96–88), all regulations of the Educaiton Division, including EDGAR, will be automatically transferred to the new Department.

Comment. A commenter suggested that a provision should be added to EDGAR to allow the appropriate official of the Education Division to waive Federal requirements governing a grantee's administrative responsibilities if the grantee can show that its own administrative standards offer suitable protection against misuse of Federal funds.

Response. No change has been made. The major provisions of EDGAR are designed to assure equal treatment of applicants and grantees. A waiver procedure could lead to unequal treatment of applicants and grantees. Further, a waiver procedure based on the specific conditions suggested would, in some instances, be contrary to statutory requirements. However, deviations from the administrative requirements of 45 CFR Part 74 are permissible in the circumstances outlined under 45 CFR Part 74.6.

Comment. A commenter suggested that EDGAR should require project advisory committees and review panels to include people knowledgeable about problems of sex bias and sex stereotyping.

Response. No change has been made. Each individual program currently maintains its own list of qualified experts, selected on the basis of criteria determined by the nature of the program. EDGAR does not regulate the qualifications of review panel members nor does it regulate on the issue of project advisory committees. Decisions on these matters are left to program officials and may, if appropriate, be included in program regulations.

Comment. A commenter requested clarification on the eligibility of nonprofit organizations for grants and the application procedures they should follow.

Response. No change has been made. Nonprofit organizations are covered by all sections of EDGAR unless a section specifies a category of organization that excludes them. See 45 CFR Part 74, Subpart Q, which provides separate cost principles for nonprofit organizations. Proof of nonprofit status is governed by § 100a.51 of EDGAR.

Comment. A commenter suggested that a provision be added to EDGAR that would authorize the evaluation of educational materials that are developed without Federal support.

Response. No change has been made. This issue will be handled in the regulations for the National Diffusion Network. Those regulations were published in the **Federal Register** as a notice of proposed rulemaking on June 25, 1979 (44 FR 37178).

Comment. A commenter suggested that a provision be added to EDGAR to require the Education Division to allow the proposed costs for Alaskan projects to exceed by 20 percent the proposed costs for other projects conducting comparable activities in non-Alaskan locales. Another commenter suggested that the cost of providing regular educational services in a project area should be taken into consideration in determining if a proposed project's costs are "reasonable" under terms of § 100a.204(b)(2).

Response. No change has been made. It is the policy of the Education Division that, whenever feasible, local cost levels are taken into account in determining if project costs are "reasonable."

Comment. A commenter said that the preamble to EDGAR cited Section 400A(a)(1) of GEPA as legal authority for EDGAR. The commenter questioned the adequacy of the section as legal justification for EDGAR.

Response. No change has been made. The preamble to the proposed regulations cited Section 400A(a)(1) of GEPA only in reference to the Education Division's intention to implement new data collection procedures at a later date. The legal authority for EDGAR is Section 408(a)(1) of the General Education Provisions Act (20 U.S.C. 1221e–3(a)(1)), unless otherwise noted. Section 408(a)(1) gives appropriate officials of the Education Division general authority to issue regulations for administration of the programs of the Division.

Proposed Rules

PART 100a—DIRECT GRANT PROGRAMS

Subpart A—General

Regulations that Apply to Direct Grant Programs

§ 100a.1 Programs to which Part 100a applies.

Comment. One commenter suggested that the listing of programs in § 100a.1 should be expanded to indicate whether or not a program is subject to the provisions of OMB Circular A–95—Federal cooperation with State and local governments in the evaluation, review, and coordination of Federal assistance programs and projects. The same suggestion proposed that such an indication in the table in § 100a.1 could be used instead of the separate listing in § 100a.170.

Response. No change has been made. The number of programs in Part 100a to which Circular A–95 applies is relatively small and they can be more readily and easily identified for readers in the separate listing in § 100a.170 than as part of the listing in § 100a.1.

Changes. The list of programs has been updated to conform to changes made in the Education Amendments of 1978 (Pub. L. 95–561).

§ 100a.2 Exceptions in program regulations to Part 100a.

Comment. One commenter asked if EDGAR applies to Public Service Fellowships, inasmuch as application for the fellowships is made through a common application for both the fellowships and the Public Service Institutional Grants made under Sections 901 through 904 of the Higher Education Act, which is covered in Part 100a.

Response. No change has been made. Part 100a applies to Public Service Institutional Grants under 45 CFR Part 194, Subpart A, but does not apply to fellowships awarded to individuals or allotted to institutions by the Commissioner under Subpart B of Part 194. However, the definitions in Part 100c apply to both programs.

Comment. One commenter suggested that this section be revised to allow program regulations to identify the sections of Part 100a that apply to the program, rather than simply identifying those that do not apply.

Response. No change has been made. If appropriate, a program's regulations may specify that only certain sections of EDGAR apply and all others do not apply. Section 100a.2 does not require the identification to be made section by section, but allows a general statement if it is more convenient for the program regulations to do that.

Comment. One commenter suggested that the effectiveness of EDGAR will be lost by exceptions and different interpretations unless program regulations are written so they do not conflict with EDGAR.

Response. No change has been made. Some exceptions to EDGAR are necessary because of statutory variations among different programs or by the nature of a particular program. However, it is the policy of the Education Division to keep exceptions to a minimum.

Subpart C—How to Apply for a Grant

The Application Notice

§ 100a.100 Publication of an application notice; content of the notice.

Comment. One commenter suggested that a provision be added to specify that annual application notices will be sent to all applicants that have sought funding during the previous three years.

Response. No change has been made. The reason for publication in the **Federal Register** is to provide general notice that applications are being solicited. Some programs mail copies to individual applicants in addition to the notice, but it is not considered feasible to have a general provision that requires individual mailings by all programs.

Changes. Proposed paragraph (c) of this section has been deleted as unnecessary. The revision does not represent any change in policy but eliminates reference to an internal Education Division practice of generally publishing a single application notice for all discretionary grant programs. This practice does not require regulation.

§ 100a.101 Information in the application notice that helps an applicant apply.

Changes. Various changes have been made in paragraph (a) to clarify the information that will be in an application notice. For example, the use of multi-year funding and any limits on the length of the project period will be included.

§ 100a.102 Deadline date for applications.

Comment. One commenter suggested that § 100a.102 should be shortened by consolidating the provisions of §§ 100a.102(b) and 100a.102(c) related to satisfying the deadline requirements for submitting applications. As proposed, § 100a.102(b) applies only to applications for new projects and § 100a.102(c) applies only to applications for continuation projects. The same commenter suggested that similar consolidations could be made throughout the proposed regulations.

Response. No change has been made. The provisions of § 100a.102(b) and 100a.102(c) are intended to be substantially different in effect. If an applicant for a new project fails to meet the requirements of § 100a.102(b), the application is not considered. However, if an application for a continuation award is late, the application still may be considered and the applicant granted an award, if the appropriate official of the Education Division chooses to do so.

Changes. Three changes have been made in this section, to conform to current Education Division practice, as follows:

1. The requirement to deliver an application "to the Education Division" has been changed to provide that delivery will be made "to the address specified in the application notice."

2. Two additions have been made with regard to the "proof of mailing" provisions. One allows the proof to be "A dated shipping label, invoice, or receipt from a commercial carrier" and the second is "any other proof of mailing acceptable to the appropriate official of the Education Division."

3. A new paragraph (e) has been added to specify that if an application is mailed through the U.S. Postal Service, the Education Division does not accept either a private metered postmark or a mail receipt not dated by the U.S. Postal Service as proof of mailing.

Application Contents

§§ 100a.107–100a.119

Comment. Several commenters suggested that applicants will be confused by three different sets of requirements, each of which can be understood to constitute a different format for the preparation of applications. The three sets of requirements mentioned by the commenter are—

1. The application content requirements contained in §§ 100a.107–100a.119;

2. The selection criteria contained in §§ 100a.202–100a.206; and

3. The instructions given in the application information package for completing part IV of the standard application form prescribed by OMB Circular A–110. The commenters proposed that a means be found to have one application format.

Response. A change has been made. The format for an application is established by the Education Division for each program in accordance with the

requirements of the statutes and regulations applicable to that program. The regulations in 45 CFR Part 74, a copy of which is appended to EDGAR, implement the policies in OMB Circulars A–102 and A–110.

EDGAR contains requirements that affect the application form, but the form for each program is accompanied by all relevant instructions. EDGAR includes these provisions to avoid repetition in individual program regulations and to achieve consistent treatment among Education Division programs. However, to avoid unnecessary duplication and possible inconsistent requirements, §§ 100a.107 and 100a.108 have been revised to clarify the information that must be submitted. The revisions eliminate the overlap between the EDGAR application content requirements and the EDGAR selection criteria by limiting some of the application content requirements to formula grant programs, which do not use selection criteria.

Changes. Proposed §§ 100a.109–100a.115 have been renumbered as §§ 100a.110–100a.116.

§ 100a.107 Applications for new grants under a discretionary grant program.

This section has been revised to apply only to applications for new grants under discretionary grant programs. As revised, the section incorporates the substance of proposed § 100a.108. The revised section also enumerates the provisions of EDGAR that specify information to be included in each application that the section covers.

§ 100a.108 Applications for new grants under a formula grant program.

This section has been added to enumerate the information that is required in each application for a new grant under a formula grant program administered directly by the Education Division.

§ 100a.108 Address each selection criterion. [Proposed]

Comment. One commenter suggested that this section be clarified as to whether or not each criterion must be discussed in a separate and clearly identifiable section of the application.

Response. No change has been made. The specific format and organization of an application is either specified in the program's application forms or instructions or is left to the judgment and discretion of the applicant. How this is to be accomplished is not restricted by these regulations.

Changes. The substance of this proposed section has been incorporated into § 100a.107.

§ 100a.109 Changes to application; number of copies.

Changes. Paragraphs (a) and (b) of proposed § 100a.116 have been rearranged and the section has been renumbered as §100a.109.

§ 100a.110 Assure compliance with appropriate requirements of law.

Comment. Several commenters suggested that the assurances required under §100a.110 should be required from an applicant only once, rather than with each application.

Response. No change has been made. Section 100a.110 requires that an application for a direct grant include a single, general assurance that a grantee will comply with special requirements of law, program requirements, and administrative requirements. This general assurance applicable to all programs will replace a number of separate specific assurances that many programs previously required and thus constitutes a significant reduction in application content. The assurance is printed in each program's application form and is, therefore, automatically submitted by each applicant. To maintain and accurately use a file containing this general assurance from each of the many thousands of prospective applicants would constitute a significant recordkeeping and procedural burden for the Education Division and would not reduce paperwork for the applicants.

§ 100a.111 Describe the project.

Changes. Two changes have been made.

1. Proposed paragraph (c) has been deleted because it was redundant with proposed paragraph (d), which has been redesignated as paragraph (c).

2. Proposed paragraph (e) has been rewritten as paragraphs (d) and (e) to make it clear that the description of a proposed project is to describe intended program participants and beneficiaries and the expected effects of the project on persons who are members of groups that have been traditionally underrepresented. (See discussion of this revision—under the issue on provisions relating to members of groups that have been traditionally underrepresented—in the "MAJOR ISSUES" section of this summary.)

§ 100a.112 Include a proposed project period and a timeline.

Comment. One commenter asked if the term "budget period" refers to a period of time that is quarterly, monthly, annually, or some other length.

Response. No change has been made. The term is defined in Part 100c as "an interval of time into which a project period is divided for budgetary purposes" and can be variable, depending on the project. Usually, the budget period is 12 months.

Comment. One commenter suggested that all school-based projects should operate on a July 1 through June 30 fiscal year.

Response. No change has been made. Setting a project fiscal year of a particular period for all programs would remove flexibility to meet particular program and grantee needs. For example, some school-based projects might begin in the fall and continue through the following summer. A project period of July 1 through June 30 would be inappropriate for these and other projects.

§ 100a.113 Describe key personnel.

Comment. A number of commenters suggested that the requirement to give the name and qualifications of the project director and other key project personnel should be revised to allow the application to include only job descriptions or qualifications of personnel, if actual employees are unknown at the time the application is filed.

Response. A change has been made. Except for the principal investigator for a proposed research project, the requirement has been revised to require that names be provided only if known at the time of application. If names are not known, an applicant may give a description of qualifications of key personnel to be employed.

§ 100a.115 Describe the evaluation plan.

Comment. One commenter suggested that a separate evaluation plan should not be required for each proposal, inasmuch as it sometimes is more logical for the proposed evaluation to be integrated into the description of the project.

Response. No change has been made. The section does not require a separate evaluation plan but merely a description of the evaluation plan. If appropriate, the applicant may integrate the description into the overall project description. However, the evaluation plan must be sufficiently clear to enable reviewers to judge the application and to award points.

Comment. One commenter suggested that EDGAR require all proposed evaluations to include an analysis of the differential impact of projects on the sexes and on various racial and ethnic groups within each sex.

Response. No change has been made. While the Education Division is

committed to advancing educational equity, the Education Division is also concerned with reducing the paperwork burden on applicants and grantees. Section 100a.590 requires a grantee in its project evaluation to assess the effect of the project on persons being served by the project, including persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly. Without statutory authority for requiring more explicit detail in project evaluations, the Education Division is reluctant to require grantees under all programs to include in their evaluations an analysis as specific as the commenter has proposed. Individual program regulations may require more specificity, if appropriate.

Changes. 1. Because some evaluations are explicity required by statute, § 100a.115 has been revised to refer to evaluations required by both statute and regulations.

2. The revisions also make it clear that the section refers to the applicant's plan to evaluate the project.

§ 100a.116 Demonstrate capability; include evaluation of completed project.

Comment. Two commenters suggested that the requirement for submitting an evaluation of a completed project be modified to allow for the possibility that no evaluation had been completed at the time of application for the new project.

Response. A change has been made. Section 100a.116(b) has been changed to require an evaluation only if one has been completed at the time the application is submitted.

§ 100a.118 Application for a continuation award.

Changes. Proposed paragraph (b)(1) requiring compliance with the deadline date for continuation applications has been deleted as unnecessary because it repeats the requirements in § 100a.102(c), which is cross referenced in this section.

§ 100a.119 Information needed if private school students participate.

Comment. Several commenters suggested that the application include more explicit information related to services to children enrolled in private schools if these services are required or permitted under the authorizing statute.

Response. A change has been made. A new § 100a.119 has been added to require that under certain programs an applicant must include information in its application describing how the project will fulfill Federal requirements to serve children enrolled in private schools.

Joint Funding Simplification Procedures

§ 100a.124 Applications and preapplications under the Joint Funding Simplification Act.

Changes. A number of sections have been added to the final EDGAR to specify the procedures used by the Education Division to implement the Joint Funding Simplification Act of 1974. Section 100a.124 lists the other sections in EDGAR that have been amended to implement the Joint Funding Simplification Act. The procedures in EDGAR supplement the procedures in OMB Circular A–111 (41 FR 32040), published on July 30, 1976. The Office of Education published procedures to supplement this circular on May 18, 1979 (44 FR 29164), and these were used as the basis for the procedural rules in EDGAR. The sections added to EDGAR replace the procedures published on May 18, 1979.

Separate Applications—Alternative Programs

§ 100a.126 Application must list all programs to which it is submitted.

Comment. Several commenters suggested that § 100a.126 should be revised to clarify its meaning.

Response. A change has been made. The title of this section has been changed to better describe the content of the section. Also, some changes have been made in the wording to make its meaning clearer. The purpose of this section and of § 100a.125 is to allow applicants to submit an application to any program from which the applicant thinks it may get funded.

This section requires an applicant to inform the Education Division of any programs from which the applicant seeks funding for the same project. The appropriate official of the Education Division needs this information to carry out official duties under Subpart D. For example, an applicant may submit an application to two programs under either of which the proposed activity could be fully funded. The application may rate highly enough under both programs to deserve funding. However, the appropriate official cannot fund the project for more than 100 percent of the cost of the project. (Cross-reference—See § 100a.233 Setting the amount of the grant.)

If the appropriate official knows in advance all the programs from which an applicant seeks funding, then the official can coordinate the selection and grantmaking procedures under Subpart D.

Preapplications

§ 100a.131 Consideration of a preapplication.

Comment. Two commenters suggested that preapplication procedures not be used by the Education Division, and one commenter suggested that preapplication procedures be used more extensively.

Response. No change has been made. As proposed, the regulations simply allow the use of preapplication procedures. Whether preapplication procedures are useful is an issue that is decided separately for each program. In some programs, the use of preapplications can reduce the paperwork burden on applicants, but in other programs there would be no benefit.

Change. Proposed § 100a.130 has been renumbered as § 100a.131.

§ 100a.133 Result of a preapplication.

Comment. One commenter suggested that it should be made clear whether an applicant may apply under a program even if the appropriate official of the Education Division informs the applicant that it is ineligible for assistance under the program.

Response. No change has been made. Although the regulations do not preclude an ineligible applicant from applying, under § 100a.216(a)(1) an application from an ineligible applicant is not considered for a grant award but is returned to the applicant. A cross reference to § 100a.216 has been added to § 100a.133 to make this outcome clear.

Comment. One commenter suggested that an applicant that is ineligible for assistance should be told why it is ineligible.

Response. A change has been made. Section 100a.133(a)(3) has been revised to provide that an explanation of why an applicant is ineligible will be provided.

Change. Proposed § 100a.132 has been renumbered as § 100a.133.

Open Meeting Certification Under Certain ESEA Programs

§100a.139 The local educational agency shall hold an open meeting.

Comment. Two commenters suggested that giving each person who attends a required public meeting an opportunity to comment is too broad and could result in lengthy meetings at which endless comments might be used to block timely, official action.

Response. No change has been made. Paragraph (c) of this section requires only that a local educational agency give persons who attend a public

meeting an opportunity to comment. This does not mean that unlimited time must be devoted to comments. It is possible, for example, for the local educational agency to place reasonable limits on the amount of time that each person may speak when many people want to speak, or to permit written comments to be submitted by those who do not have time to make a full oral presentation.

Comment. One commenter suggested that the requirements related to open meetings should apply only to applications for grants of $100,000 or more.

Response. No change has been made. These regulations implement a statutory requirement for ESEA programs. The statute does not authorize the limit suggested by the commenter.

§ 100a.140 Give notice of the open meeting; make information available.

Comment. One commenter suggested that this section be revised to require that notice of the planned meeting be in both English and the primary language of any population group that is a direct target of the proposed project.

Response. No change has been made. The notice should be given both in English and in languages other than English, if necessary to communicate with persons or groups affected by the application or to communicate with members of other groups of the kind referred to in § 100a.140(c).

Comment. Several commenters suggested that § 100a.140 be revised to delete requirements for special or extra announcements to ensure that members of groups that have been traditionally underrepresented have an opportunity to participate in the open meeting. Another commenter suggested that the applicant should be required to provide evidence in its application that steps were taken to involve members of traditionally underrepresented groups in the open meeting.

Response. No change has been made. Section 100a.140 does not necessarily require special or extra announcements. It simply requires that reasonable consideration and effort be given to assuring that members of traditionally underrepresented groups have an equal opportunity to receive information about the planned meeting and to participate in it. Requiring evidence that these steps have been taken would place an unwarranted burden on many applicants.

Other changes. See the discussion at the beginning of this Appendix ISSUE: Participation of students enrolled in private schools.

§ 100a.141 Certify that open meeting was held.

Comment. Three commenters suggested deleting the provisions that require an applicant local educational agency to certify that it has considered all comments and recommendations made at a required open meeting and has included the results of its consideration in the application.

Response. A change has been made. It is reasonable to require an applicant to certify that it has conscientiously reacted to all suggestions and recommendations. However, the section has been revised to make it clear that the applicant is not required to identify each recommendation, decision, and consequence in its application, but merely to certify that it amended its application, as appropriate, in light of those comments and recommendations.

State Approval Procedures

§ 100a.150 Review procedure if State must approve applications; purpose of §§ 100a.151–100a.153.

Comment. One commenter suggested that the regulations should include a list of programs to which State approval procedures apply.

Response. No change has been made. Programs that require State approval will specify in their regulations that State approval is required.

§ 100a.151 When an applicant under § 100a.150 must submit its application to the State; proof of submission.

Comment. One commenter suggested that the requirement that an application requiring State approval be sent to the State 15 days before the deadline for its submission to the Education Division should be changed to require that the submittals be made simultaneously.

Response. No change has been made. The requirement gives a State 15 days in which to approve or disapprove the proposal before it is sent to the Education Division. If applications were sent simultaneously to both the State and the Education Division, applications that the State disapproves within the 15-day period would be sent to the Education Division. Inasmuch as the Eduation Division, under these programs, can only fund applications approved by the State, the 15-day period—by enabling States to give early notices of disapproval—can serve to avoid wasted effort for both the applicants and the Education Division.

Comment. One commenter suggested that the postmark provisions regarding the mailing of applications to the Education Division should be extended to cover mailing to State offices, when the latter mailings are required.

Response. No change has been made. The present provision requires only that a copy of the letter requesting State approval be attached to the application sent to the Education Division. If the postmark requirements of § 100a.102 were extended to include submission to the State, applicants would be required to include proof of the postmark with the application to the Education Division. This would involve an undue and unnecessary burden on the applicant and would be difficult for the Education Division to administer effectively.

§ 100a.152 The State reviews each application.

Comment. One commenter suggested that this section should include the criteria to be used by a State in reviewing an application requiring State approval.

Response. No change has been made. The criteria used by the State are determined by the State on the basis of the authorizing statute and the program regulations. The criteria used by a State are not subject to consolidation in EDGAR.

§ 100a.153 Deadlines for State approval.

Comment. One commenter suggested that the appropriate offical of the Education Division be required to publish a deadline in the **Federal Register** for receipt of State approvals of applications, rather than having the option to publish or not to publish a deadline.

Response. No change has been made. Under a program that does not make grants on a competitive basis, it generally is not necessary to establish a deadline for submission of applications. If a deadline is necessary to facilitate selection of applications for support, a deadline will be published. No deadline will be established without publication.

Other changes. Paragraph (b) has been amended to apply a more flexible deadline for receipt of State approvals. This change conforms to current Education Division practice.

§ 100a.154 Effect of State approval; failure to approve.

Comment. Two commenters suggested that the provision that prohibits a grant if a State does not approve an application on or before the deadline for State approval should be modified to allow for an appeal to the Education Division if the State disapproves or fails to approve the project.

Response. No change has been made. Under the programs subject to these

EDGAR provisions, the requirement for State approval is statutory and not subject to modification by regulations. Appeals are allowed only if specifically authorized under a program statute.

State Comment Procedures

§ 100a.155 Review procedure if State may comment on applications: purpose of §§ 100a.156–100a.158.

Comment. One commenter suggested that programs to which State review procedures apply be listed for the convenience of the reader.

Response. No change has been made. Programs that require an opportunity for the State to comment will specify in their program regulations that the opportunity for comment is required.

§ 100a.158 Deadlines for State comments.

Comment. One commenter suggested that the appropriate offical of the Education Division be required to publish a deadline in the Federal Register for receipt of State comments on applications, rather than having the option to publish or not to publish a deadline.

Response. No change has been made. The Education Division generally publishes a deadline for State comments under these programs. Occasionally, however, it may not be necessary or desirable to publish a deadline; therefore, the flexibility in this section has been retained.

Changes. Paragraph (c) has been revised to make it clear that a State's comments must be sent to the Education Division.

§ 100a.159 Effect of State comments or failure to comment.

Comment. One commenter suggested that an applicant should be required to provide the State with a reasonable period of time within which to make its comments. One of the commenters suggested that State comments be made within 30 days after the application is submitted.

Response. No change has been made. If State comments must be submitted to the Education Division by a deadline, the appropriate official of the Education Division, in the Federal Register notice, allows a reasonable period of time between State receipt of the application and the deadline for submission of comments to the Education Division. This period commonly is 30 days or more, but the precise period must be flexible to meet the needs for particular programs.

Comment. One commenter suggested that the word "considers" be defined in order to indicate more clearly what effect State comments have on an application.

Response. No change has been made. The appropriate official of the Education Division gives serious consideration to all comments that a State makes. It is not possible to define generally how this is done for all programs.

OMB Circular A–95 Clearinghouse Procedures.

§§ 100a.179–100a.173

Comment. One commenter suggested that the term "clearinghouse procedures" be defined.

Response. No change has been made. As § 100a.170(b) makes clear, the procedures referred to are those used by clearinghouses established in accordance with OMB Circular A–95.

Comment. One commenter suggested that the listing of programs subject to the requirements of OMB Circular A–95 should include a footnote indicating that the list is subject to change from time to time. The footnote should tell the reader where to find the current listing.

Response. No change has been made. The list in EDGAR will be updated and revised as necessary.

§ 100a.171 Notify the appropriate clearinghouses.

Comment. One commenter suggested that this section be deleted because the provisions are redundant or similar to additional requirements established by the clearinghouses.

Response. A change has been made. The section has been revised so that its provisions apply only if superseding requirements have not been established by the appropriate clearinghouses.

§ 100a.172 Applicant shall show compliance with A–95 procedures.

Comment. One commenter suggested that an applicant be required to include a statement with its application that all comments made by or through a clearinghouse have been considered before the application is submitted.

Response. A change has been made. The revised provision requires that the applicant include a statement that comments made by or through a clearinghouse have been considered before submission of the application to the Education Division. This statement is required by the provisions of OMB Circular A–95.

Comment. One commenter suggested that provisions be added requiring the Education Division to notify clearinghouse of major actions taken on applications submitted to them, as provided for in OMB Circular A–95.

Response. A change has been made. The Education Division complies with the requirements of the OMB Circular and there is no need to include provisions to that effect in EDGAR, which is limited to regulations that directly affect applicants for and recipients of funds from the Education Division.

Development of Curricula or Instructional Materials

§§ 100a.190–100a.192

Comment. Several commenters suggested that EDGAR implement Section 1248 of the Education Amendments of 1978 (Pub. L. 95–561), which amends Section 426 of the General Education Provisions Act. Section 426 requires certain procedures to encourage effective dissemination of curricula or instructional materials developed under contracts or grants.

Response. A change has been made. Sections 100a.190–100a.192 have been added to EDGAR to implement Section 426.

Subpart D—How Grants Are Made

Selection of New Projects

§ 100a.200 How applications for new grants are selected for funding.

Comment. One commenter suggested that each program be required to publish applicable EDGAR selection criteria and other provisions that affect the selection of an application.

Response. A change has been made. For the convenience of applicants, program regulations will include applicable EDGAR selection criteria and the weighting factors that apply to them. Appropriate conforming revisions have been made in §§ 100a.200 and 100a.201.

§ 100a.201 How to use the selection criteria.

Comment. Two commenters suggested that all programs be required to use weighted selection criteria, rather than some programs using weighted criteria and others using unweighted criteria.

Response. No change has been made. The question of whether selection criteria should be weighted or unweighted can most appropriately be resolved on the basis of individual program objectives.

Comment. One commenter suggested that EDGAR selection criteria should be given more than 30 percent of the total number of points allocated among several selection criteria.

Response. No change has been made. By assigning a minimum of 30 percent of all points to the EDGAR selection criteria, the regulations assure that each criterion will receive at least the degree of consideration that the EDGAR

weighting factors specify. To assign more than 30 percent of a program's selection criteria points to EDGAR criteria might result in undesirable distortion of priorities which differ among programs. However, a program may increase the weight given to particular EDGAR criteria.

Changes. Section 100a.201 has been revised to reflect the fact that program regulations will repeat the EDGAR criteria, rather than merely referencing them.

§ 100a.202 Selection criterion—plan of operation.

Comment. A commenter asked that EDGAR include a selection criterion that would provide up to five percent of a program's selection points for equitable participation of private school children.

Response. A change has been made. Under a program that requires participation of private school students, applications will be evaluated in part on the quality of the applicant's plan to provide that participation. Because this was not an explicit criterion in the proposed EDGAR, and because applications must soon be submitted under the affected programs, the new criterion will apply to grants made after October 1, 1980, but not to applications for grants in the current fiscal year. Addition of the criterion is appropriate, since under the affected programs the quality of opportunity for participation of private school students is an important factor in judging the overall quality of an application.

The quality of the opportunity for participation may be shown in many ways. The Commissioner expects that the exact nature of participation may vary widely among school districts. Because the views of local private school representatives may be of value in evaluating the plan of operation, applicants are encouraged to submit statements from these representatives covering such points as—

The success of efforts to involve private school representatives in the planning process;

The reasons for differences in program benefits provided to public and private school students; and

Evaluations of past participation by private school students in similar projects administered by the applicant.

Changes. A note has been added after this section to emphasize that the language regarding traditionally underrepresented groups does not mean that a grantee can or should include ineligible participants in its project.

§ 100a.203 Selection criterion—quality of key personnel.

Comment. Several commenters said it is not possible to name the project director and other personnel at the time an application is submitted.

Response. No change has been made. Applicants may describe minimum qualifications when personnel to be employed have not yet been selected. This does not authorize omission of the name and qualifications of the principal investigator of a research project. If actual personnel are not names, the rating for this criterion will be based on the descriptions of qualifications provided in the application.

Comment. One commenter suggested deleting § 100a.203(b)(4) regarding the amount of time each key person plans to commit to the project.

Response. No change has been made. The qualifications of personnel are relevant only to the extent to which those personnel are available to the project; therefore, time commitments are a necessary consideration.

Comment. One commenter suggested that using "past experience" as the primary basis for determining the qualifications of key personnel constitutes a bias against young but otherwise highly qualified personnel.

Response. A change has been made. Section 100a.203(c) has been revised to provide that both experience and training will be considered to determine the qualifications of a person. The section also allows the applicant to include information to support other measures of personnel qualifications, in addition to experience and training.

Comment. One commenter suggested that applicants be required to give an assurance that project personnel will be hired through affirmative action employment procedures.

Response. No change has been made. Affirmative action procedures are required only to overcome the effects of past discrimination and are not necessarily required with respect to the personnel for a particular project.

Comment. Several commenters suggested deleting proposed § 100a.203(b)(3) from the final regulations. That provision dealt with the qualifications of project employees who are members of an applicant's governing body or who are related to members of the governing body or the project staff.

Response. A change has been made. Section 100a.203(b)(3) has been deleted, and paragraphs (4) and (5) have been redesignated as paragraphs (3) and (4), respectively. Section 100a.525 prohibits grantees from allowing certain conflicts of interest in project activities and is considered sufficient.

§ 100a.204 Selection criterion—budget and cost effectiveness.

Comment. One commenter suggested that the section should be more specific with respect to the information that the application should contain on budget and cost effectiveness, possibly even setting support levels to be provided for each participant in a program.

Response. No change has been made. It is not possible to write requirements that would apply to all programs and yet be specific enough to provide useful guidance for individual programs. If specific requirements are needed, they will be in a program's regulations.

§ 100a.205 Section criterion—evaluation plan.

Comment. One commenter suggested that limiting evaluation to "objective, quantifiable methods" is too restrictive in some cases.

Response. A change has been made. The provision has been revised to allow the use of evaluation methods that are appropriate for the project and requires that the methods be objective "to the extent possible." However, applicants will be expected to use objective methods unless the nature of a project makes it impractical to do so.

Selection Procedures

§ 100a.215 How the Education Division selects a new project: purpose of §§ 100a.216–110a.222.

Comment. One commenter suggested that time limits be established for the Education Division to complete its procedures for review and selection or rejection of applications.

Response. No change has been made. The schedule for awarding grants necessarily varies from year to year, depending on congressional appropriations, new program statutes, and other factors that are not always within the control of the Education Division.

§ 100a.216 Returning an application to the applicant.

Comment. One commenter suggested that a provision be added stipulating that an application be returned to the applicant if State approval is required but has not been obtained. Another commenter suggested that applications received after the deadline should also be returned.

Response. No change has been made. If State approval is required but is not obtained, the application would be returned under paragraph (b)(4) of this section, which provides that if a project

cannot be funded—which would include failure to meet legal requirements, such as State approval or the deadline for submission—the application is returned.

Comment. One commenter suggested that an application that is returned under this section be accompanied by a copy of reviewer comments.

Response. No change has been made. This section provides for return of an application that cannot be considered for support. This means these applications are not reviewed, but are eliminated from the competition, and there are no reviewer comments about these applications. The reason for returning an application is explained when the application is returned by the Education Division.

Changes. Proposed § 100a.104(b)—regarding compliance with procedural rules—has been transferred to § 100a.216(a)(2). Proposed paragraphs (a)(2) and (3) have been renumbered as (a)(3) and (4).

§ 100a.217 How the Education Division selects applications for new grants.

Comment. One commenter suggested that a provision be added to allow interested individuals to submit applications for jobs as review panelists.

Response. No change has been made. Methods of recruiting review panelists are concerns of the particular programs, which establish recruitment policies and procedures appropriate to the particular needs of the respective program. Individuals wishing to serve as review panelists for a particular program should write directly to the Education Division unit that administers the program.

Comment. Several commenters offered suggestions regarding the qualifications of the experts that review applications.

Response. No change has been made. The appropriate official of the Education Division uses experts whom the official considers qualified to review an application and to advise the official about it. The qualifications to perform these responsibilities differ widely among programs. A specific definition of expert might unnecessarily limit the official's ability to select appropriate individuals.

Comment. Two commenters suggested that the Education Division delete from EDGAR the prohibitions against a person serving as a member of a panel of experts if the person is an HEW employee engaged in the administration of the program or was involved in the administration of the program within the past year.

Response. No change has been made. Individuals involved in administration of the program are responsible for reviewing the applications after the group of experts has made its assessment. It would therefore not be appropriate for them to also serve as members of the group.

Comment. Two commenters suggested that if the rank ordering of projects is disregarded in the award of one or more grants, the appropriate official should provide a justification for doing so.

Response. No change has been made. Revised § 100a.218(b) requires that the Education Division inform an applicant why its application was not funded. This would include any necessary justification for changing the initial rank ordering of applications.

Comment. One commenter suggested that a provision should be added with regard to the effect on rank order selection of geographical distribution and similar factors.

Response. A change has been made. The change allows the appropriate official to consider any information relevant to any requirement that applies to the selection of applications for new grants. This could include priorities such as geographic distribution. Some programs do not use priorities in the application selection process but rely solely on evaluative selection criteria for this purpose.

Other changes.

1. Paragraph (a) of the proposed section has been deleted as redundant with paragraph (b). The remaining paragraphs have been redesignated accordingly.

2. Redesignated paragraph (d) has been revised to better reflect the procedures used by the Education Division to select applications for funding. The revised paragraph (d) includes material proposed as § 100a.218(a), (b), and (c).

§ 100a.218 Applications not selected for funding.

Changes. This section has been amended by deleting the requirement for each unfunded application to be returned to the applicant.

§ 100a.219 Exceptions to the procedures under § 100a.217.

Comment. Two commenters suggested that the word "mishandled" in paragraph (b)(3) of this section implies that an Education Division decision not to fund an application can be appealed and asked that the appeal process be specified.

Response. No change has been made. A determination that an application was "mishandled" is made solely by the appropriate official of the Education Division on the basis that an administrative error was made in the selection process. The provision does not imply that a decision not to fund a proposed project based on a low score (for example) can be formally appealed by an applicant. A formal appeal of discretionary judgments, such as the scoring of applications, is neither authorized nor established by this section nor by any other section of Part 100a.

Comment. One commenter suggested that an appeal procedure for unsuccessful applicants be added to the project selection procedures.

Response. No change has been made. It is not feasible to have a formal appeal procedure for the thousands of unsuccessful applicants who submit applications each year.

Comment. One commenter suggested that funding without competition should be made more restrictive and less open-ended.

Response. No change has been made. The provision is quite restrictive as currently written. It is limited to: (a) situations in which the objectives of the project could not be achieved if the more time-consuming procedure in § 100a.217 were used; (b) applications under the Joint Funding Simplification Act; or (c) administrative mishandling during the preceding competition that resulted in an application not being funded when it otherwise would have been. The procedures in § 100a.220 should insure that the situations described in (a) are not expanded inappropriately.

§ 100a.220 Procedures the Education Division uses under § 100a.219(a).

Comment. One commenter suggested that the board to review an application being considered for funding without competition should include an LEA representative.

Response. No change has been made. The board's functions are to make the objective determinations specified in paragraphs (c) (1), (2), and (3) and to submit its findings to the appropriate official of the Education Division. The membership of the board is designed to allow expeditious handling of the application, and the addition of non-Federal personnel to the membership could lead to unacceptable delays in processing the application.

Changes. Paragraph (c)(2) has been revised to recognize that some programs have priorities or other requirements, in addition to selection criteria, that govern the selection of applications for funding.

Procedures To Make a Grant

§ 100a.235 The notification of grant award.

Comment. One commenter suggested that the Education Division notify applicants when the project has been approved, in order that "applicants know where they stand" rather than wait until the amount of the award has been determined as a result of negotiations following original selection.

Response. No change has been made. An applicant is informed soon after selection of its application that the proposed project has been recommended for funding, subject to satisfactory agreement on the amount and other matters. The official notification of a grant award is made only if this agreement is reached. The notification of grant award is then issued, which officially establishes the amount of the grant and the legal conditions related to the transfer of funds. The notification of grants award is a legal document that confirms and formalizes matters that both the applicant and the Education Division have agreed to.

Comment. One commenter suggested that the notification of grant award should indicate the proposal or project title to help recipients identify the program to which the notification relates.

Response. No change has been made. The section allows the desired information to be included. It is not desirable to regulate the specific content matter to be included in all award notifications since needs may vary among programs.

Approval of Multiyear Projects

§ 100a.250 Project period can be up to 60 months.

Comment. One commenter suggested that the maximum project period be less than 60 months in order to leave a maximum amount of funds available for competitive awards that are innovative or that are responsive to newly identified needs.

Response. No change has been made. The section allows each program to choose an appropriate maximum project period. If a program wishes to use a multi-year project period, any limits on the length of the project period will be established in the program's application notice. (See § 100a.101(a)(6).) Most multi-year projects are for a period of 36 months.

Changes. Proposed paragraph (a) and (b) have been combined. The reference to the usual project period of 12 months has been deleted since it was not intended as a restriction and could have been confusing.

§ 100a.253 Continuation of a multi-year project after the first budget period.

Comment. Three commenters suggested that provisions should be added about the use of any funds that are left over at the end of the budget period.

Response. A change has been made. A new paragraph (c) provides that the amount of a continuation award is the total amount of funds that the appropriate official determines is needed for the new budget period minus any funds that remain available from the preceding budget period.

Comment. One commenter suggested that the requirement that a grantee must submit every required report before a continuation award is made should be waived under certain conditions. Another commenter suggested that the requirement be clarified as to exactly what reports are required.

Response. No change has been made. Submission of certain reports is a necessary condition to receiving a continuation award. The requirement covers any report that must be submitted before the date of the continuation award. If a grantee is uncertain about the reports that are due under a particular grant, the grantee should contact the Federal grants officer for that project.

Changes. A new paragraph (b) provides that priority for funding is given to continuation awards over new grants. This priority should serve to ensure consistent treatment of applications for continuation awards under all programs of the Education Division. If Congress appropriates sufficient funds, each application for a continuation award will be judged on the basis of the criteria in § 100a.253(a) and will not be subject to competition with other applications. Each application that meets the criteria will be funded before funds under the applicable program are used to make any new grants.

Miscellaneous

§ 100a.260 Allotments and reallotments.

Comment. One commenter suggested that the reference to §§ 100b.230–100b.235 should be dropped and this section revised to say that reallotment of unneeded funds is done "according to statute."

Response. A change has been made to adopt the suggestion. Section 100a.260 contains the revision.

§ 100.261 Extension of a project period.

Comment. One commenter suggested deletion of the requirement that a grantee seeking an extension must make that request at least 45 days before the end of the project period. The commenter explained that the provision implies that a failure to meet the requirement would preclude a desirable extension of the project period.

Response. No change has been made. The Education Division needs an adequate amount of time to review a request for extension.

Changes. A new paragraph (f) has been added to this section to specify that a project period extension is to be used "to carry out the activities in the approved application."

Subpart E—What Conditions Must Be Met by a Grantee

Nondiscrimination

§ 100a.500 Federal statutes and regulations on nondiscrimination.

Comment. Several commenters suggested that clarification is needed as to how grantee compliance with Federal nondiscrimination statutes and regulations is to be demonstrated.

Response. No change has been made. Any necessary clarification of the statutes and regulations listed in this section is presently the responsibility of the Office for Civil Rights, HEW.

Project Staff

§ 100a.510 Use of a project director.

Comment. A number of commenters suggested deleting this section in the belief that it requires a full-time project director; several other commenters objected to the director's being given authority to spend project funds; and one commenter suggested correcting the implication that some projects do not need directors.

Response. A change has been made. The phrase in paragraph (c) requiring that the project director have authority to spend project funds has been deleted. Whether the project director has spending authority may vary, depending on the policy of the applicant. The rest of the section has been left unchanged.

The provisions of this section apply only to a grantee that uses a project director to administer its project; the section does not require a project director. Not all projects need a salaried project director. To require one in all cases would be wasteful of program funds.

§ 100a.511 Waiver of requirement for a full-time project director.

Comment. Several commenters suggested that the waiver provision be deleted to eliminate unnecessary paperwork; one asked that the section be revised to eliminate any implication that EDGAR requires a full-time project director; and one asked that the waiver provision be retained to make an exception possible if particular projects or circumstances make a full-time director unnecessary.

Response. A change has been made. Paragraph (a) has been revised to make it clear that this section does not require a grantee to use a full-time project director. Rather, it authorizes the appropriate official of the Education Division to waive particular program regulations that do require a full-time director, and it establishes conditions for the waiver. The paperwork required has been kept to a minimum, consisting simply of a written request that shows that a waiver is appropriate.

§ 100a.515 Qualifications of project staff. [Proposed]

Comment. One commenter suggested that this section be deleted and left to State and local control as part of their regular personnel operations. One commenter suggested adding the requirement that members of the project staff have appropriate State certification.

Response. A Change has been made. The section has been deleted. Education Division concern about the qualifications of project staff will be resolved through the application requirements in §§ 100a.113 (for formula grant programs) or by § 100a.203 (for discretionary grant programs) and any resulting grant award, or through individual program requirements.

§ 100a.516 Inservice training for project staff. [Proposed]

Comment. Two commenters suggested that this section be revised to make it clear that grant funds may be used for any training that is necessary for project staff.

Response. A change has been made. The section has been deleted. If training of project staff is necessary, the project application or subsequent amendment will specify the conditions associated with the training, making it unnecessary to regulate those conditions in EDGAR.

§§ 100a.515–100a.519 Project staff.

Other changes. Proposed §§100a.517–100a.521 have been renumbered as §§ 100a.515–100a.519.

§ 100a.515 Use of consultants.

Comment. One commenter suggested that this section establish a maximum rate of pay for a consultant.

Response. No change has been made. The authority for a grantee to use its own general policies and practices when hiring a consultant should be sufficient to control the costs of consultant services.

Comment. One commenter suggested that the provision prohibiting the use of grant funds to pay a consultant, unless the project needs the consultant and cannot meet the need by hiring an employee, is too restrictive and counterproductive from the standpoint of cost-effectiveness and should, therefore, be revised or deleted.

Response. A change has been made. The word "hiring" has been changed to "using." This broadens the provision to apply to current employees as well as to those that grantee might hire. The purpose of the requirement is to prohibit the use of consultants if the grantee's employees can perform the same function, thus reducing the cost to the grant.

§ 100a.516 Compensation of consultants—employees of institutions of higher education.

Comment. Two commenters asked for clarification of the phrase "unusual circumstances" as a condition for paying consultant fees to an employee.

Response. No change has been made. The phrase is used in § 100a.516 to mean that grantees must be able to demonstrate that the circumstances involved are sufficiently unusual to justify payments that otherwise would be prohibited. To define the term more specifically could unnecessarily limit the types of circumstances that the Education Division might judge to be unusual.

Comment. One commenter suggested that the provisions allowing an institution of higher education to pay one or more of its employees consultant fees from grant funds should either be deleted or extended to other grantee organizations.

Response. No change has been made. This section does not give special privileges to institutions of higher education or to their employees, but actually restricts the conditions under which employees may be used as consultants. No change is necessary to enable other grantees to pay one or more employees consultant fees, subject to the provisions of § 100a.515, which apply to all grantees. Under § 100a.515 an employee would be able to act as a consultant only if the service is outside the scope of his or her employment contract.

Conflict of Interest

§ 100a.525 Conflict of interest: participation in a project.

Comment. Two commenters suggested that this section apply only to grantees that have no formal conflict of interest policy.

Response. No change has been made. The requirements in § 100a.525 are considered minimal. If a grantee's conflict of interest policies and practices are at least as restrictive as the requirements of this section, the grantee's policies can be applied. If the grantee's policies and practices are less restrictive, the requirements in this section are considered necessary to avoid the most common forms of conflict of interest.

Comment. One commenter suggested clarifying the prohibition against using a project position for "private gain" to make it clear that the intent is to prohibit "financial gain."

Response. A change has been made. Section 100a.525(b) has been revised to make the prohibition apply with respect to "private financial gain."

Allowable Costs

§ 100a.530 General cost principles.

Comment. One commenter suggested that a percentage of an administrative officer's salary should be allowable to satisfy matching requirements.

Response. No change has been made. If all or part of an administrative officer's salary is an allowable cost under terms of the grant, that amount of the salary could instead be claimed as part of a grantee's matching share.

Cross-reference.—See 45 CFR Part 74 Subpart G—Cost Sharing or Matching.

§ 100a.534 Foreign travel. [Proposed]

Comment. One commenter suggested that prior approval by the appropriate official of the Education Division should be required with respect to all travel using grant funds, not just foreign travel. Several commenters suggested that travel to and from Guam, American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands should not be considered foreign travel. Other commenters said travel to and from Canada should not be considered foreign travel, and two commenters suggested that travel to and from Mexico should not be considered foreign travel. One commenter asked that clarification be provided as to what constitutes "advance approval."

Response. A change has been made. The section has been deleted. The cost

principles for institutions of higher education, in Appendix D to 45 CFR Part 74, required prior approval for "travel outside of Canada and the United States and its territories and possessions." This is a general policy of the Federal Government contained in OMB Circular A–21, published in the Federal Register on March 6, 1979.

The circular's restriction does not apply to State or local governments or to other grantees of the Education Division. Despite this, the Education Division has in the past extended the restriction to all grantees. Given the concerns raised by the commenters, it has been decided to discontinue this general policy.

Unless otherwise provided in the cost principles appended to 45 CFR Part 74, imposed through a specific condition of a grant, or required by a program statute or regulation, "foreign travel" by grantee personnel will be treated as any other travel, unless an institution of higher education is the grantee. The Education Division considers the "advance approval" required by 45 CFR Part 74 to be satisfied if the travel is specified in an approved application.

The suggestion that all grantee travel be subject to prior approval by the Education Division has been rejected as unnecessarily burdensome.

Indirect Cost Rates

§ 100a.561 Approval of indirect cost rates.

Comment. One commenter suggested that this section be changed to reflect HEW approval of indirect cost rates.

Response. No change has been made. According to applicable law this is a function that cannot be delegated outside of the Education Division. Section 421A of the General Education Provisions Act states that the Commissioner of Education can only delegate his or her authority to an Office of Education employee. The Department of Health, Education, and Welfare performs a service function for the Education Division in computing indirect cost rates but final approval is determined by the Education Division. Whether this will be affected by the creation of the Department of Education is currently being studied.

Comment. One commenter suggested that this section require States to recognize indirect cost rates established by an institution's cognizant Federal auditor in accordance with OMB Circular No. A–88. (This circular requires that all Federal agencies recognize indirect cost rates established by the institution's cognizant Federal auditor. For each institution that receives Federal grants, a particular agency is designated as the institution's cognizant auditor. All Federal agencies recognize the rate set by the cognizant auditor. This policy prevents Federal agencies from using different indirect cost rates for the institution and simplifies the institution's financial relations with the Federal Government.)

Response. No change has been made. There is no statutory authority to require States to recognize federally established indirect cost rates.

Comment. One commenter suggested that paragraph (b) be revised to make it clear that States do not approve rates for State agencies that provide public education for elementary and secondary students even though these agencies are considered local educational agencies under the definition contained in § 100c.1.

Response. A change has been made. Paragraph (b) has been revised to provide that the term "local educational agency" does not apply to State agencies. This revision conforms the section to current practices in the Education Division.

§ 100a.562 Indirect cost rates for educational training projects.

Comment. One commenter suggested that State and local governments not be excluded from application of the limitations on indirect cost rates for educational training projects. Several other commenters suggested that the limitations be removed from institutions of higher education, hospitals, and nonprofit organizations and that they be allowed to have indirect cost rates established in accordance with OMB Circular No. A–21.

Response. No change has been made. The limitations apply to institutions of higher education, hospitals, and nonprofit organizations only. State and local government rates for all programs—other than those that prohibit the use of Federal funds to supplant non-Federal funds—are established in accordance with Appendix C to 45 CFR Part 74. The limitations on other grantees are necessary to ensure that grant funds are used primarily to support project activities, rather than for indirect costs. It has not been necessary to impose similar limitations on State and local governments, since their indirect cost rates generally are much lower than rates for other types of institutions. The limitations represent a longstanding policy that has been the subject of periodic reassessment. Allowing an unrestricted indirect cost rate would have a substantial adverse impact on the amount of training that could be supported with available funds, because of the typically large indirect cost rates of the institutions to which the limitations apply.

§ 100a.563 Restricted indirect cost rate—programs covered.

Comment. Two commenters said that although regulations for the developing institutions programs under title III of the Higher Education Act do not allow indirect cost rates to be charged to grant funds, this section allows these charges under that program.

Response. A change has been made to delete the program from coverage by § 100a.563 and to rely, instead, on the limitations in the program regulations.

Comment. One commenter suggested clarification of the language in this section with regard to Federal funds being used to supplant non-Federal funds.

Response. A change has been made. The section now provides that Federal funds are not to be used to supplant non-Federal funds. The language in the proposed regulations was an incorrect statement of the statutory provisions.

Comment. One commenter suggested clarification of whether or not a "grant award officer" of the Office of Education has the right to question and attempt to change an approved indirect cost rate.

Response. No change has been made. A grant award officer or a representative of a grant award officer may request clarification of an established rate, but no employee of the Education Division has the authority to increase or decrease a rate approved by the Education Division.

Other changes.

(1) Additional programs have been added to the list. However, the list is not necessarily exhaustive.

(2) A new paragraph (c) has been added to allow institutions other than States and local governments to use an eight percent indirect cost rate under these programs, unless the appropriate official of the Education Division determines that the "restricted" rate would be lower. Since many institutions of higher education and other organizations do not presently have a "restricted" rate, this provision can be used to substantially reduce their paperwork burden by allowing them to adopt a predetermined rate, rather than making a full submission to establish a "restricted" rate. The appropriate official retains authority to require affected institutions to use a lower rate if necessary to prevent supplanting.

§ 100a.564 Restricted indirect cost rate—formula.

Comment. Three commenters suggested that the minus sign in the formula should be changed to a division sign.

Response. A change has been made to effect the suggested change. The minus sign was a typographical error.

Comment. One commenter suggested that the concept of restricted indirect costs is not equitable. The commenter said the formula is inconsistent with the cost principles in the Federal Procurement Regulations and with the Cost Accounting Board's Standard No. 402.

Response. No change has been made. The formula is necessary to remove those items included in the general indirect cost rate that would result in Federal funds supplanting non-Federal funds. The cost principles referred to by the commenter are subject to overriding statutory requirements, including those that prohibit supplanting.

§ 100a.565 Administrative charge.

Comment. One commenter suggested that compensation for the chief administrative officer of the grantee and for his or her immediate staff be included in the term "administrative charge."

Response. No change has been made. The exclusions are necessary to avoid using Federal funds to supplant non-Federal funds.

§ 100a.566 Fixed charges.

Comment. One commenter suggested that this section be changed to identify all current fringe benefits.

Response. A change has been made. As revised, the section includes unemployment compensation payments, health insurance payments, and "all similar costs normally considered to be employee fringe benefits."

§§ 100a.565, 100a.566, and 100a.567 Administrative charge, fixed charges, and other expenditures.

Comment. One commenter expressed concern over the terms that are the subject of the cited sections. The commenter says the terms have broad or ambiguous meanings or require an expanded definition and that the final cost objective of each term may be classified as either a direct or indirect cost by a grantee.

Response. No change has been made. Each grantee must classify costs as either direct costs or indirect costs consistently in like circumstances.

§ 100a.567 Other expenditures.

Changes. A qualification has been added to § 100a.567(a)(7) to allow project funds to be used for election expenses that result from elections required by a program statute. Since these expenses result from a program requirement, a grantee is allowed to include them in computing an indirect cost rate.

§ 100a.568 Using the restricted indirect cost rate.

Changes. A conforming change regarding election expenses has been made in the formula in paragraph (a). See the preceding discussion under § 100a.567.

Coordination

§ 100a.580 Coordination with other activities.

Comment. One commenter suggested that the activities with which coordination is required should be limited to those directed to similar target groups and geographic areas, rather than to all those having similar purposes.

Response. A change has been made. The additional qualifications have been added. The change is intended to ensure that compliance with the requirement is feasible for a grantee. Before the change, the section could have been read to require coordination with activities that a grantee would not reasonably have known about.

Other changes. The section has been amended to implement a statutory requirement for coordination under the Basic Skills Program, Title II, ESEA.

§ 100a.581 Methods of coordination.

Changes. Two new paragraphs have been added. Paragraph (c) adds joint activities to activities that might be included in coordination, and paragraph (e) adds use of grant funds to increase the impact of funds provided under other programs. In addition, the opening phrase has been amended to make it clear that if coordination is appropriate, a grantee must use one or more of the methods listed in this section.

Evaluation

§ 100a.590 Evaluation by the grantee.

Comment. Two commenters suggested that evaluation provisions should include requirements for using evaluation to improve a continuing project.

Response. No change has been made. The use to be made of a program evaluation normally would include improvements to a continuing project, but that use would not be possible in all cases.

Comment. One commenter suggested that annual evaluation may not be appropriate in all cases, and another commenter said evaluation requirements should be left to program regulations.

Response. No change has been made. If annual evaluation is not necessary under a particular program, the program regulations will provide for an exception to this section. However, evaluation is believed to be appropriate for determining the effectiveness of most projects. With respect to the second comment, program regulations—where appropriate—may provide more detail regarding a grantee's responsibility to evaluate its project.

Comment. Two commenters suggested that evaluation should focus on the specific target groups to which the activity is directed, rather than focusing on special groups that are not the particular targets of the activity.

Response. No change has been made. Paragraph (c) of this section already provides that the evaluation include an assessment of the effect of the project on those served by the project.

Changes. A new paragraph (c)(2) has been added to require that project evaluations include participating students who are enrolled in private schools, if the program statute requires that those students be provided an opportunity to participate.

§ 100a.591 Federal evaluation—cooperation by a grantee.

Comment. One commenter suggested that the amount of funds that a grantee should be required to spend to cooperate with evaluations should be limited to the amount provided for that purpose by the grant.

Response. No change has been made. The suggested limitation on a grantee's obligation to cooperate with a Federal evaluation study is not feasible. Because most project grants do not include funds specifically designated for evaluation costs the proposed limitation could negate most requests for cooperation. This would be an unacceptable result, inasmuch as grantee cooperation is necessary in order for the Education Division to carry out statutorily required evaluations. Nevertheless, the Education Division recognizes that cooperation could be, in unusual circumstances, a burden on a grantee. In these cases, § 100a.592 (or § 100b.592) can be used by the Education Division to provide compensating relief. In practice, the Education Division generally plans and conducts national evaluations in a

manner that minimizes the burden placed on grantees.

Comment. One commenter suggested that the required cooperation be limited to evaluations required by statute or by an appropriate official of the Education Division.

Response. No change has been made. Grantee cooperation is required only with evaluations that are authorized by statute.

Construction

§ 100a.601 Applicant's assessment of environmental impact.

Comment. One commenter suggested that an applicant's assessment of a project's environmental impact should be included with the application rather than being sent separately to the HEW regional office.

Response. A change has been made. Environmental impact statements are to be provided with the application in accordance with application submission requirements. The change is intended to simplify the procedures to apply for Education Division grants.

§ 100a.602 Preservation of historic sites must be described in the application.

Changes. This section was revised to reflect the expanded coverage of 45 CFR Part 800. These regulations of the Advisory Council on Historic Preservation now cover property that is *eligible* for inclusion in the National Register of Historic Places. This protection of eligible property is in addition to the protection already afforded to property now on the National Register.

Publication and Copyrights

§ 100a.620 General conditions on publication.

Comment. Several commenters suggested deleting the requirement that published project materials avoid race stereotype or sex bias on grounds that the prohibition violates Section 432 of GEPA and infringes guarantees under the First Amendment of the Constitution. They also objected to the seemingly broad scope of the requirement, arguing that there would be unwarranted restrictions on the content of these materials. One commenter suggested providing an exception for materials in which the presentation of those stereotypes and biases are necessary to the purpose of the materials.

Response. A change has been made. The requirement has been deleted. Given the uncertain scope of the requirement, a regulation on this subject will not be adopted at this time. The Secretary of Education has decided to study this issue, and therefore the provision will not be adopted at this time. If it is determined at a later date that a regulation is appropriate, further public comment will be requested in a notice of proposed rulemaking published in the **Federal Register.** However, grantees are expected to be sensitive to the necessity of avoiding inappropriate biases and stereotypes in materials developed with Federal funds.

§ 100a.621 Copyright policies for grantees and contractors.

Comment. One commenter suggested that limitations to copyright that are specified in the Copyright Law (Pub. L. 94–553) should be incorporated into Part 100a.

Response. No change has been made. EDGAR governs the circumstances under which a grantee may apply for a copyright and the grantee's use of royalty income (by reference to 45 CFR Part 74). However, EDGAR does not include any regulations that implement or interpret the Copyright Law. Any regulations under that law would be issued on a Government-wide basis, not by the Education Division.

Comment. One commenter suggested that there be some limitations on a grantee's right to copyright materials.

Response. No change has been made. The purpose of allowing a grantee the unrestricted right to copyright materials is to encourage the grantee to disseminate the materials more widely. It is the intention of the regulations that grantees who achieve successful dissemination should benefit from owning the copyright to the materials. Further, the change from past practice will reduce burdensome paperwork, both for grantees and for the Federal Government.

§ 100a.622 Definition of "project materials."

Changes. This section has been revised to make the definition of "project materials" apply to §§ 100a.620 and 100a.621, rather than only to § 100a.620, as proposed in the NPRM.

Other Requirements for Certain Projects

§ 100a.650 Participation of students enrolled in private schools.

Comment. One commenter suggested that this section be revised to emphasize that eligible private school children must be given a genuine opportunity to participate if the authorizing statute provides for their participation.

Response. A change has been made. The change provides the suggested emphasis and conforms to similar language used in § 100b.651.

Comment. One commenter suggested that if public school systems have no authority to obtain necessary data from private schools, the public school systems should not be held responsible for the compliance of private schools with the nondiscrimination requirements of Title VI of the Civil Rights Act (CRA) in connection with the participation in Federal programs of children enrolled in private schools.

Response. No change has been made. Sections 100b.651–100b.662 contain rules for providing opportunities for students enrolled in private schools to participate in federally assisted programs. The rules include a number of responsibilities that applicants, grantees, and subgrantees have with respect to providing those opportunities for participation.

In fulfilling these responsibilities, an applicant, grantee, or subgrantee may need certain information about programs and services available to students enrolled in private schools and about the needs of these students. The applicant, grantee, or subgrantee is obligated to seek information that is necessary to fulfill these responsibilities. The information may be provided by representatives of students enrolled in private schools, by the students themselves, or by other knowledgable and responsible individuals or organizations.

Nothing in these regulations requires an applicant, grantee, or subgrantee to undertake responsibilities that cannot properly be fulfilled because of lack of necessary information from or lack of participation by representatives of private school students. However, the applicant, grantee, or subgrantee is expected to make appropriate efforts to obtain the information and participation needed to provide federally assisted program services to eligible students.

The Education Division expects that information and appropriate participation will be provided by representatives of students enrolled in private schools, by the students themselves, or by other knowledgeable and responsible individuals and organizations.

These regulations do not govern compliance with Title VI of the Civil Rights Act and, therefore, do not address the commenter's concern with that aspect of private school students' participation.

Cross-reference.—§ 100a.500 Federal statutes and regulations on non-discrimination.

Other changes. Proposed § 100a.680 has been renumbered as § 100a.650.

§ 100a.681 Indian Self-determination and Education Assistance Act. (Proposed)

Changes. This section has been deleted. Because of the varying requirements under the programs affected, it is not possible to provide consolidated regulations on this subject.

Changes. Proposed §§ 100a.682–100a.685 have been renumbered as §§ 100a.681–100a.684.

§ 100a.681 Protection of human research subjects.

Changes 1. A cross reference to 45 CFR Part 46 has been added to this section. Part 46 contains the HEW regulations covering the protection of human research subjects. A proposed rule that revises these regulations was published in the Federal Register on August 14, 1979 (44 FR 47688). The proposed rule states an exception to the coverage of that part for certain kinds of educational research. Most projects funded by the Education Division will be exempt from the Part 46 institutional review board requirements. However, the EDGAR section affirms a basic policy of the Education Division—a grantee must protect human research subjects from injury.

2. The section has been revised by substituting the term "social injury" for "sociological harm." This change makes the provision consistent with terminology used in 45 CFR Part 46. Another revision makes it clear that the requirement only extends to injuries that might result from the project.

3. Proposed § 100a.682 has been renumbered as § 100a.681.

Subpart F—What Are the Administrative Responsibilities of a Grantee?

General Administrative Responsibilities

§ 100a.701 The grantee administers or supervises the project.

Comment. One commenter suggested that the prohibition against a grantee transferring responsibility to others be clarified.

Response. A change as been made. Paragraph (b) has been deleted because paragraph (a), which requires direct administration, accomplishes the same result. It should be noted that the requirement that a grantee directly administer or supervise administration of project does not preclude obtaining particular services, materials, or other needs by contract. However, it does preclude a grantee from being a "conduit" for the grant funds by passing on its responsibility for the project to another party.

§ 100a.702 Fiscal control and fund accounting procedures.

Comment. One commenter suggested that this section specifically require a double entry system of accounting.

Response. No change has been made. The requirement that the control and accounting systems used by the grantee result in "proper disbursement of and accounting for Federal funds" is believed to be adequate without compelling grantees who do not use double entry accounting to institute that system for handling Federal funds.

§ 100a.707 When obligations are made.

Comment. One commenter suggested that this section should make clear that a ruling by the Internal Revenue Service that a personal service contractor is actually an employee rather than a contractor, does not affect the date when the Education Division considers the obligation to have been made.

Response. No change has been made. If the personal services contract was entered into legally, and in good faith that the arrangement was a contract and not an employee-employer relationship, the provisions of paragraph (c) would be considered binding by the Education Division even if the Internal Revenue Service ruled, for its own purposes, that the relationship is that of an employer and an employee.

Comment. One commenter suggested that personal services by a contractor should be considered to constitute obligations at the time the services are performed, rather than on the date the grantee makes a binding written commitment for the personal services.

Response. No change has been made. To achieve the purposes of the project, performance under a personal services contract may be necessary after the end of the project period. The Education Division may wish to reimburse grantees in these circumstances, and therefore has not adopted the comment.

Note.—Under § 100a.707(b), the phrase "personal services by an employee of a grantee" refers only to services that are within the scope of the employment agreement.

§ 100a.708 Prohibition of subgrants.

Comment. Three commenters suggested that the prohibition against subgrants, unless specifically authorized by statute, should be made less restrictive to allow a State educational agency to make subgrants from Federal grant funds it receives.

Response. No change has been made. Any grants made to State educational agencies under Part 100a are awarded on a competitive basis. (All State formula grant programs are covered under Part 100b of EDGAR.) The purpose of a grant—under a program covered by Part 100a—is to help the recipient carry out its own project. No program listed in § 100a.1 provides Federal funds that are intended for use by recipients other than those directly awarded the grants. Where Congress intended to authorize States to award subgrants, provision is made in the program statute. Those programs are covered under Part 100b.

Comment. Three commenters suggested that the section should be revised to allow grantees to enter into contracts using grant funds.

Response. A change has been made. A new subsection (b) has been added to make clear that a grantee may enter into contracts using grant funds awarded under Part 100a. There was no intent under the proposed section to prohibit contracting under a grant.

Reports

§ 100a.720 Financial and performance reports.

Comment. One commenter suggested that nonprofit grantees should be required to submit financial and performance reports more frequently than annually, primarily because those organizations frequently have deficient financial accounting systems.

Response. No change has been made. Section 100a.720(c) authorizes the appropriate official of the Education Division to require a grantee to report more frequently than annually under certain circumstances, including those referred to by the commenter. However, it is better to make these exceptions case by case, in order to avoid an undue paperwork burden on other grantees.

Comment. Two commenters suggested that financial and performance reports should be required only once a year from grantees of the National Institute of Education, rather than quarterly as the proposed section provided.

Response. A change has been made. Financial reports to NIE are required annually, but the Director of NIE is authorized to require performance reports more often than annually. The National Institute of Education believes that because of the nature of research projects, proper monitoring sometimes requires performance reports more often than annually.

§ 100a.721 Reports under the Joint Funding Simplification Act.

Changes. This section has been added to EDGAR to allow the appropriate official of the Education Division, in cooperation with other Federal or State agencies involved in a grant, to

determine the frequency of financial and performance reports necessary for a grant under the Joint Funding Simplification Act.

Records

§ 100a.730 Records related to grant funds.

Comment. One commenter suggested that the general requirement to keep "records to facilitate an effective audit" is too broad and should be revised to require that the funding agency specify the records that are to be kept to facilitate an audit.

Response. No change has been made. This is a statutory requirement established by Section 437 of the General Education Provisions Act. It is not possible to write general regulations that specify every type of record that should be kept for audit purposes, since programs and projects vary so widely. However, the Education Division will provide technical assistance, at the request of a grantee, regarding appropriate recordkeeping policies.

§ 100a.731 Records related to compliance.

Comment. Several commenters said the requirement that a grantee "keep records to show its compliance with Federal statutes and regulations that apply to the grant" is too broad and might require grantees to generate a wide range of records that are only peripherally related to the grant. Commenters suggested that recordkeeping requirements be limited to those specified by Subpart D of 45 CFR Part 74, in accordance with OMB Circular A–110.

Response. A change has been made. The section now refers to "program requirements" rather than to "Federal statutes and regulations." This change is intended to make it clear that the section does not require a grantee to keep records on matters not directly associated with the purposes and uses of the grant. However, the grantee must keep records that enable it to show that it has met applicable program requirements.

§ 100a.734 Record retention period.

Comment. Two comments suggested that the requirement to retain records for five years is excessive and should be reduced to two or three years.

Response. No change has been made. The five-year retention period is requird by Section 437(a) of the General Education Provisions Act.

Comment. One commenter suggested clarification of the phrase "completion of the activity" to make the beginning of the retention period more definite.

Response. A change has been made. A cross-reference is made to 45 CFR 74.22—Starting date of retention period.

Other changes. This section has been simplified to say that unless a longer period is required under 45 CFR Part 74, a grantee must retain records for five years. The change is intended to eliminate confusion about the applicability of requirements in 45 CFR Part 74. The 45 CFR Part 74 provisions requiring a three-year record retention period are superseded by the statutory requirements of Section 437 of GEPA, on which this section is based, to the extent that Section 437 would require a longer retention period.

Privacy

§ 100a.741 Protection of students' privacy in research and testing.

Changes. This section has been amended by incorporating the statutory provisions referenced in the proposed regulations.

Data Collection by a Grantee

§§ 100a.750–100a.754.

Changes. These sections have been amended to incorporate the latest interpretations and procedures relating to the Federal Education Data Acquisition Council (FEDAC) and the Office of Management and Budget (OMB). References to OMB review of some data collection instruments are included because of the occasional cases in which the data collection activity does not come under the FEDAC procedures.

Subpart G—What Procedures Does the Education Division Use To Get Compliance?

§ 100a.901 Suspension and termination.

Changes. This section has been amended to reflect the fact that the Education Appeal Board, rather than the Departmental Grant Appeals Board, will have jurisdiction over suspension and termination proceedings under any of the Office of Education programs listed in the table following § 100a.1.

§ 100a.903 Effective date of termination.

Comment. One commenter suggested that termination be made effective on delivery to the grantee of the notice of termination or on a date specified by the Education Division in the notice, whichever is later.

Response. A change has been made. The section has been rewritten to provide that termination is effective on the latest of (a) the date of delivery of the termination notice to the grantee, (b) the date specified in the termination notice, or (c) the date a final decision is made by the Commissioner under Part 100d (Education Appeal Board Procedures) or by the Departmental Grant Appeals Board under 45 CFR 16.10. These changes provide needed flexibility in setting termination dates and recognize the jurisdiction of the Education Appeal Board over terminations under Office of Education programs.

PART 100b—STATE-ADMINISTERED PROGRAMS

General Comments

Comment. One commenter asked for a clarification of how this part relates to public junior or community colleges, and suggested that all regulations that apply to public junior or community colleges be contained in separate sections.

Response. No change has been made. If a limited group of agencies is intended, a limiting term (such as "local educational agency") is used, and the regulations apply only to members of that group. If no limitation is intended, a general term (such as "applicant" or "subgrantee") is used.

Cross-reference.—See 45 CFR Part 100c—Definitions.

Subpart A—General

Regulations That Apply to State-Administered Programs

§ 100b.1 Programs to which Part 100b applies.

Changes. Various technical corrections have been made in the list of programs subject to Part 100b.

Eligibility for a Grant of Subgrant

§ 100b.50 Statutes determine eligibility and whether subgrants are made.

Changes. Proposed § 100b.4 has been renumbered as § 100b.50 to conform more closely to the numbering in Part 100a. This and similar numbering changes should make it easier for readers to use Parts 100a and 100b.

§ 100b.51 A State distributes funds by formula or competition.

Comment. One commenter suggested that this section should be changed to recognize that there may be programs that permit the State to make subgrants either by formula or by competition at the State's option.

Response. A change has been made to adopt the substance of this suggestion.

Comment. One commenter questioned the clarity of the term "objective formula" as used in subparagraph (a).

Response. A change has been made. The adjective "objective" has been deleted. The distinction being made is between programs in which a State has little discretion in selecting applications or establishing the amount of a subgrant because there is a statutorily required formula for intra-State distribution of the program funds, and programs in which the State has substantial discretion in these matters.

Other changes. Proposed § 100b.5 has been renumbered as § 100b.51.

Subpart B—How a State Applies for a Grant

State Plans and Applications

§ 100b.101 The general State application.

Comment. One commenter asked why this section was limited to local educational agencies (LEAs) and why no mention was made of public junior or community colleges.

Response. No change has been made. This section implements Section 435 of the General Education Provisions Act, which applies only to programs under which SEAs make subgrants to LEAs. Since public junior or community colleges do not provide elementary or secondary education, they are not covered under the usual statutory definition of LEA. The State Vocational Education Program, which does include them (see the definition of "local educational agency" in Part 100c), is not subject to the State general application requirement. The program has its own general application required by the program statute.

Comment. One commenter suggested that the assurance that "each program will be administered in accordance with all applicable statutes, regulations, program plans, and applications" includes civil rights and other similar statutes and regulations. Therefore, these documents should not have to be submitted with every plan or application.

Response. No change has been made. Civil rights assurances are required by the civil rights regulations referenced in § 100b.500. Amendments to those regulations are outside the scope of EDGAR.

Comment. One commenter suggested that procedures be established, including formal notification in writing, to inform members of traditionally underrepresented groups regarding consultation in the planning process.

Response. No change has been made. Because program statutes vary widely regarding participation of various groups in the planning process, it is not feasible to have a general rule that would apply to all of the programs listed in § 100b.1.

Changes. This section has been amended to incorporate statutory provisions that were referenced in the proposed regulations

§ 100b.102 Definition of "State plan" for Part 100b.

Comment. One commenter suggested that the fact that § 100b.102 includes programs involving public junior or community colleges does not meet the problem that § 100b.101 does not include those institutions.

Response. No change has been made. The general application, which covers only programs under which SEAs make subgrants to LEAs, does not apply to all of the programs listed in § 100b.1. Under some of those programs, no subgrants are authorized. Under others, LEAs are not eligible for subgrants. The definition of "State plan" in § 100b.101 is simply used as a term of convenience to refer to the various documents—not including the State general application—that are subject to various EDGAR requirements, such as the requirement for certification under § 100b.105. Therefore, the State plan or application for each program is referenced in § 100b.101.

Comment. One commenter suggested that the Migant Education Program be listed in § 100b.102.

Response. A change has been made. This suggestion has been adopted. The State application under the migrant program is subject to many of the same rules as the other "State plans" listed in this section.

Other changes. Various corrections have been made to the list of documents covered by this section.

§ 100b.103 Three-year State plan

Comment. One commenter suggested that because paragraph (b) permits the Commissioner to establish a staggered schedule for the submission of three-year State plans, the Commissioner should not ask for the submission of a State plan more often than once every three years.

Response. No change has been made. The establishment of three-year State plans is at the discretion of the Commissioner. The establishment of a staggered schedule would, in the first years, involve the submission of State plans by some States at less than a three-year interval. If there is no objection to the staggered schedule, the Commissioner must be able to take the necessary steps to begin it.

Comment. Several commenters suggested that three-year State plans should not be permitted or, alternatively, that the regulations should require annual amendment of three-year State plans.

Response. No change has been made. The Commissioner believes that making each State plan effective for three years in desirable to reduce paperwork and to improve the quality of each State plan. To require annual updating would largely defeat the advantages of three-year State plans. The Commissioner does, however, retain the right to require an amendment if he or she determines that one is essential. Further, this determination may be made on a case by-case basis or in individual program regulations.

Cross-reference.—See § 100b.140 Amendments to a State plan.

Also, this section does not prevent the Commissioner from obtaining necessary information through reports from the States, rather than in the State plans. Amendments to State plans should be submitted as necessary, not on a predetermined schedule that ignores the need for amendment.

Changes. 1. Certain documents required under Title I of the Vocational Education Act, the Library Services and Construction Act, and Sections 141–143 of ESEA are specifically exempted from application of this section. These exemptions are necessary to accommodate the annual need for these documents.

2. States are given the option of submitting annual plans under the Vocational Education Program, rather than three-year plans. This change is necessary to avoid undue burden on some States that are finding it more convenient to submit annual plans under this program.

§ 100b.104 A State shall include certain certifications in its State plan.

Comment. One commenter suggested that the certifications required by this section be submitted as a part of the State's general application under § 100b.101.

Response. No change has been made. These are two different kinds of statements. The general application includes statutory assurances that remain in effect from year to year but does not contain the specific programmatic information in the State plans that makes the certification necessary.

Comment. One commenter suggested that paragraphs (3), (4), and (5) are redundant and should be dropped.

Response. No change has been made. These paragraphs are necessary to assure the Commissioner that State law will not conflict with implementation of the State plan.

Comment. One commenter suggested that each State should hold a public hearing on each State plan, particularly now that State plans may cover three years.

Response. No change has been made. Under Section 435 of GEPA, public hearings on State plans are required only for programs administered by State educational agencies, under which subgrants are made to LEAs, (see § 100b.101), or programs that have specific requirements for public hearings in the authorizing statutes (such as the State Vocational Education Program (see 45 CFR Part 104)). To extend this requirement to other State-administered programs would put a burden on States and might go beyond the Education Division's legislative authority.

Cross-reference.—See § 100b.101 The general State application.

§ 100b.105 The Governor has 45 days to comment on the State Plan.

Comment. Two commenters suggested that a State be allowed to submit its State plan to the Commissioner at the same time it submits it to the Governor under OMB Circular A–95.

Response. No change has been made. Circular A–95 provides for the Governor's comments or a statement that no comments were received to be submitted with the State plan. A State may send an advance copy of its State plan to the Commissioner to review in draft form. However, the Commissioner cannot approve the State plan until the requirements of this section have been met.

Comment. One commenter objected to the apparent requirement that the 45-day comment period for the Governor and the 60-day publication period required by Section 435(b)(7) (B) of the General Education Provisions Act (now in § 100b.101(e)(7)(ii)) must run consecutively, which would substantially delay submission of State plans.

Response. No change has been made. The Commissioner interprets the statute and the circular as permitting the two periods to run concurrently.

§ 100b.106 State plan is public information.

Comment. One commenter suggested that it should be possible to exclude personally identifiable data from the materials that a State must make available for public inspection.

Response. A change has been made. Paragraph (a)(4) of the proposed rules has been deleted. That paragraph would have required the State to make available to the public "all documents that a State uses to administer or operate a program." The remaining documents subject to this section, such as State plans, do not contain personnally identifiable information that if released would violate an individual's privacy. States would still be expected to make available at least some of the documents that would have been covered under proposed paragraph (a)(4), but may delete confidential information if appropriate.

Comment. One commenter suggested that "available for public inspection" should be interpreted to mean that a member of the public may look at or review documents under the supervision of State personnel or may purchase copies at a reasonable cost.

Response. No change has been made. Each State may establish reasonable rules and procedures for public access. Detailed requirements established by the Commissioner should not be necessary.

Comment. One commenter suggested that correspondence should not be considered public information. The commenter also asked whether "all documents" includes forms.

Response. A change has been made. As noted in the response above, paragraph (a)(4) of the proposed section has been deleted. In general, if a State uses a form in a Federal program, it should make that form available on request. States are also expected to make non-confidential correspondence available, but this section would not require release unless the correspondence was related to the State plan (see § 100a.106(a)).

Comment. One commenter suggested procedures permitting interested parties to notify the State of their interest in inspecting identified State plans. The State would then inform the interested parties, in writing, of the time and place a State plan could be inspected. Further, copies of a State plan would have to be sent by the State to those parties requesting it.

Response. No change has been made. A State may establish reasonable procedures of its own, but the Commissioner believes that detailed Federal procedures to apply to all States are unnecessary and would be overly burdensome.

Other changes. Approved subgrant applications have been added to the list of materials that must be made available for public inspection.

Amendments

§ 100b.140 Amendments to a State plan.

Comment. One commenter objected to giving the Commissioner the authority to require an amendment to a State plan. The commenter said that if the Commissioner approves a State plan, that approval should last through the life of the plan.

Response. No change has been made. The regulations indicate that the Commissioner may require an amendment if it is determined to be essential. This is a statutory requirement from Section 430(a) of GEPA. An example of a situation which would make an amendment essential is a change in the program statute or a change in State law or procedures that has a significant effect on the State's administration of the plan. The Commissioner and the State cannot properly administer a program under procedures that have been changed by a new statute or under other circumstances that would make an amendment to the plan essential.

Comment. A commenter suggested that a State should not have to amend its State plan if a change in administration or operation is still clearly in compliance with the law and the regulations. A description of that type of changes could be made in an appendix to an annual report.

Response. No change has been made. An amendment is required only if a change is significant and relevant. If the change in administration or operation alters the nature of the program or program activities so that the program is no longer what was originally approved by the Commissioner, the State needs the Commissioner's explicit approval to operate under the new policy or procedure. An amendment is the procedure to obtain that approval.

§ 100b.141 An amendment requires the same procedures as the document being amended.

Comment. Several commenters suggested that an amendment should not have to go through the same procedures as the original document. They suggested that many amendments are merely technical in nature and that the broad considerations treated in the clearance process are not necessary for amendments. One commenter suggested that a public hearing not be required if the amendment is minor.

Response. No change has been made. If an amendment to a State plan is required under § 100b.140, it is appropriate for the amendment to be subject to review by the same

organizational units, officials, or groups that were required to review the original plan or other document before it was submitted to the Education Division. The same would be true for other formal documents the State must submit under a program. Under the provisions of § 100b.140, minor or technical changes that are not significant may not require formal amendment of the State plan or other document.

Subpart C—How a Grant Is Made to a State

Approval or Disapproval by the State

§ 100b.202 Opportunity for a hearing before a State plan is disapproved.

Comment. One commenter suggested that a State should be entitled to a hearing within 60 days after disapproval of its State plan is received and that the issue should be resolved within an additional 60 days.

Response. No change has been made. Disapproval of a State plan is a drastic step that would only be used as a last resort. Since the Commissioner does not expect to have to disapprove any State plans, procedures for disapproval would be developed, if necessary, for each case. The Commissioner would, of course, provide the State with an expeditious hearing and final decision if disapproval were to become necessary.

§ 100b.235 The notification of grant award.

Comment. One commenter suggested that the Commissioner notify all States of the approval of a grant application by March 1 preceding the fiscal year in which the grant award is to be made.

Response. No change has been made. Early approval is very desirable, but it would depend on the enactment of appropriation acts, the State's early submission of plans, and other factors not under control of the Commissioner. However, the Office of Education continually works with the States to get earlier approval of State plans every year. Also, the implementation of the three-year State plan may make it possible to accomplish the commenter's purpose, at least in the second and third years of those plans, since there will not be a new approval process to go through.

Changes. Proposed § 100b.203 has been renumbered as § 100b.235.

Allotments and Reallotments of Grant Funds

§ 100b.260 Allotments are made under program statute.

Comment. One commenter suggested that the regulations describe the manner in which a State's need will be determined for reallotment purposes. Another commenter suggested that the State be given an opportunity to expend funds before the Commissioner withdraws them, and one asked if State administrative funds might be withdrawn, as well as local program funds.

Response. A change has been made. Proposed § 100b.230 has been renumbered as § 100b.260 and revised to provide that any reallotment of funds by the Commissioner is made in accordance with the authorizing statute. Proposed §§ 100b.231, 100b.232, 100b.233, and 100b.235 have been deleted. Proposed § 100b.234 has been renumbered as § 100b.261 and provides that reallotted funds are part of the grant of the State that receives the reallotted funds.

The proposed regulations being eliminated include those relative to establishing a State's need for reallotted funds. Because reallotment is a rare occurrence, detailed regulations in EDGAR are not necessary.

If the State has no need for administrative funds, and if it is not authorized or is unable to use them as program funds, the Commissioner may reallot them.

Subpart D—How To Apply to the State for a Subgrant

§ 100b.300 Contact the State for procedures to follow.

Comment. Two commenters suggested that a provision be added to Part 100b that would authorize State educational agencies (SEAs) to approve multi-year applications under which annual continuation of funding would be simpler than under procedures for annual applications. The commenter specifically suggested that SEAs be authorized to adopt continuation procedures similar to those in §§ 100a.117 and 100a.118. Another commenter raised the same issue in the form of a question about State authority to approve multi-year applications.

Response. No change has been made. If the authorizing statute or regulations for a program do not prohibit or otherwise preclude approval of multi-year applications, an SEA is free to adopt these practices. States currently use multi-year application procedures in administering programs authorized under Title IV of the Elementary and Secondary Education Act. If a State chooses to use this kind of system, funding for activities after the first year of a multi-year project must be made subject to the availability of funds.

§ 100b.301 Local educational agency general application.

Comment. One commenter suggested that the term "general application" is confusing and that the term "statement of assurances" should be used instead.

Response. No change has been made. The term "general application" is the term used in the statute; i.e., Section 436 of GEPA. It is probably less confusing to use terminology that is consistent with the Act.

Changes. This section has been amended by incorporating the statutory material referenced in the proposed rules.

§ 100b.302 The notice to the subgrantee.

Comment. One commenter asked if the State must send the subgrantee a copy of the applicable statute and regulations along with the subgrant award document.

Response. No change has been made. A State is not required to provide the subgrantee a copy of the applicable statute and regulations but is encouraged to do so. The State would be expected to provide a copy on request. Distribution of pertinent program requirements is a general administrative duty of the State.

Cross-reference.—See §§ 100b.770–100b.772—Administrative duties of the State.

§ 100b.303 Joint applications and projects.

Comment. Several commenters suggested that it is inefficient and wasteful for a number of subgrantees to combine their subgrants in order to conduct a joint project if they must maintain a separate accounts for the funds each contributes. The commenters suggested that it would be more efficient for one subgrantee to serve as fiscal agent for all the subgrantees and then treat the combined subgrants as a single account.

Response. A change has been made. This section provides a method for both applying for and administering a joint project with one account. The method requires submission of a single joint application if several applicants apply for one combined subgrant.

Under a program in which subgrant amounts are entitlements of the individual subgrantees and must be used for particular purposes, it is necessary for each subgrantee to remain separately accountable for the use of the funds it receives. This would not prevent a State agency—under a program that gives the agency discretion to select subgrantees—from allowing eligible applicants to apply as a consortium

under procedures like those described in §§ 100a.127–100a.129. In such a case, there would only be one subgrantee that would be accountable for all subgrant funds. The other participants would be legally responsible for the funds they receive to carry out their assigned parts of the project.

§ 100b.304 Subgrantee shall make subgrant application available to the public.

Comment. One commenter suggested that this section of EDGAR take precedence over 45 CFR 121a.234 and 45 CFR 121a.280 of the regulations for the Federal education of handicapped children program, which the commenter considered more restrictive.

Response. A change has been made. Section 100b.304 has been revised to require that a subgrantee shall make available to the public any application, evaluation, periodic program plan, or report relating to a program. Although Section 436 applies only to local educational agencies, the policy it expresses is extended to all subgrantees by these regulations. 45 CFR 121a.234 of the handicapped program regulations has been revoked by the revisions published with this document. The regulations in 45 CFR 121a.280 relate to public hearings by State educational agencies on State plans. This section of EDGAR does not deal with that matter.

§ 100b.305 Amendments to applications.

Comment. One commenter suggested that the words "unless the SEA deems otherwise" be added.

Response. A change has been made. This section has been revised to require that only significant amendments to subgrantee applications require the same procedures as the application itself. The purpose of the change is to avoid for minor changes the necessity for formal amendment of the application. Procedures regarding minor changes are left to the discretion of the State.

Subpart E—How a Subgrant Is Made to an Applicant

§ 100b.400 State procedures for reviewing an application

Comment. One commenter suggested that the requirement in paragraph (b) that a State must approve an application does not take into account a situation in a discretionary program in which there are insufficient funds. Another commenter suggested that the requirement does not provide for situations in which a State is either prohibited from or required to establish funding priorities.

Response. A change has been made. Titles have been added to make it clear that paragraph (b) refers only to formula subgrant programs. Under these programs, any State priorities will be governed by the State's authority under the applicable Federal statutes and regulations.

Comment. Two commenters objected to the requirement in paragraph (b) that a State must fund an application if, among other things, the applicant complies with Federal statutes and regulations. The commenter said that the requirement does not recognize a State's interests in adopting State rules that may be more stringent than Federal regulations.

Response. No change has been made. A State may adopt reasonable rules and procedures that are not inconsistent with Federal statutes and regulations. However, paragraph (b) applies to programs in which local agencies are entitled to receive Federal funds. Under these programs, a State must provide the funds if the agency qualifies under the Federal statutes and regulations. The addition of paragraph titles clarifies this distinction.

Other changes. Paragraph (c)(1) has been revised to make it clear that only eligible applicants may receive a subgrant. Eligibility is determined under the program statute and implementing regulations. Paragraph (d) has been rewritten to make its intent clearer.

§ 100b.401 Disapproval of an application—opportunity for a hearing.

Comment. One commenter suggested that there does not appear to be any explanation of why the particular programs are identified in proposed paragraph (b). One commenter wanted clarification of the specific programs that are listed.

Response. No change has been made. The programs listed are those for which the authorizing statutes require an opportunity for a hearing before the State can disapprove an application. Proposed paragraph (b) has been redesignated as paragraph (a), the list has been corrected, and the programs put in the same order as they appear in the table in § 100b.1. Proposed paragraph (a) has been revised and renumbered as paragraph (c), the content of which is discussed below.

Comment. One commenter suggested that under paragraph (a) (as redesignated) all applicants for funds under the listed programs should not have a right to a hearing before decisions are made regarding approval or disapproval. The commenter suggested that the hearing referred to in paragraph (a) be available only after disapproval.

Response. No change has been made. The authorizing statutes for the programs listed require a State to provide for a hearing before disapproval of an application.

Changes. Proposed paragraph (c) has been redesignated as paragraph (b) and revised to clarify the responsibilities of State agencies other than SEAs. Revised paragraphs (c) and (d) specify the conditions and procedures under which an SEA is required to provide an applicant with an opportunity for a hearing if the SEA does not approve an application. The new paragraphs implement procedures required under Section 425 of GEPA. A new paragraph (e) recognizes that State agencies other than SEAs are not bound by the procedures in Section 425 of GEPA, even if they must provide a hearing under a program listed in paragraph (a).

Allowable Costs

§ 100b.530 General cost principles.

Comment. One commenter noted that this section contains a cross-reference to Subpart Q of 45 CFR Part 74 which, in turn, contains a cross-reference to the cost principles in the appendices to 45 CFR Part 74. Appendix C gives the granting agency authority to approve costs of its grantees that are State or local governments. The commenter suggested that a State that is a grantee of a Federal agency may be, in turn, a granting agency itself when it makes a subgrant to a subgrantee. The commenter suggested that the State ought to have authority to approve costs of its subgrantees.

Response. No change has been made. The Commissioner interprets the cost principles in the manner suggested by the commenter. See the discussion under § 100b.707 in this appendix.

§§ 100b.532–100b.533 Particular cost items.

Changes. These sections replace proposed § 100b.531, which cross-referenced identical rules in §§ 100a.532–100a.534. For the convenience of readers, the text of §§ 100a.532 and 100a.533 is now repeated, rather than cross-referenced. Proposed § 100a.534 on foreign travel has been deleted. Foreign travel by grantees or subgrantees that are institutions of higher education is regulated under 45 CFR Part 74. (See the discussion under § 100a.534 in this appendix.)

§ 100b.534 Use of tuition and fees restricted.

Changes. This section has been added to replace the existing § 100b.58 in the General Provisions Regulations for Office of Education Programs. No change in the existing regulations is intended, other than clarifying the language.

Indirect Cost Rates

§ 100b.561 Approval of indirect cost rates.

Changes. This section has been rewritten to conform to § 100a.561. See the preceding discussion under that section.

§ 100b.563 Restricted indirect cost rate—programs covered.

Changes. The list of programs in the proposed section has been corrected and proposed § 100b.562 has been renumbered as § 100b.563. The numbering change is to conform the numbering to that used in Part 100a.

Coordination

§ 100b.580 Coordination with other activities.

Changes. 1. New paragraphs (b) and (c) have been added to implement a statutory coordination requirement under the Basic Skills Program in Title II of ESEA.

2. Proposed paragraph (b) has been redesignated as paragraph (d).

§ 100b.581 Methods of coordination.

Changes. A new paragraph (c) has been added. The new paragraph adds joint needs assessment, evaluation monitoring, technical assistance, and staff training as further examples of coordination. The opening phrase in the section has been conformed to the wording in § 100a.580.

Evaluation

§ 100b.591 Federal evaluation—cooperation by a grantee.

Comment. Three commenters suggested that "any evaluation" is too broad an interpretation of the legislative intent covered in the statutory authority for this section.

Response. No change has been made. Grantee cooperation is required only with evaluations that are authorized by statute. (See the discussion under § 100a.591 in this appendix)

Participation of Students Enrolled in Private Schools

§§ 100b.650–100b.662

Comment. One commenter asked for a list of the programs to which §§100b.650–100b.662 and § 100a.650 apply.

Response. No change has been made. If the authorizing statute for a program requires that students enrolled in private schools be given an opportunity to participate, the program regulations will specify the requirement.

Comment. One commenter suggested that, for some programs, the documentation required is excessive and has never been required before.

Response. No change has been made. If any documentation under EDGAR is not required for a specific program, appropriate language in the regulations for that program will eliminate the requirement, in accordance with the provisions of § 100b.2.

Comment. One commenter complained that the regulations require LEAs to provide services to private schools at LEA cost.

Response. No change has been made. In practically every instance the costs of administering a Federal program are provided as part of the grant or subgrant of Federal funds. In any case, EDGAR does not require that non-Federal funds be used to pay the costs of providing services to private school children.

Comment. Two commenters suggested that a definition of "genuine" is needed, and one commenter said LEAs should not be required to submit for private school children requests for services that are different from services requested for public school children.

Response. No change has been made. The services to be provided vary widely, depending on local circumstances, making it impractical to try to define "genuine" or "genuine opportunity" in detail by regulation.

Under § 100b.654, if the needs of private school children are different from the needs of public school children, it is expected that generally an application will have to contain two different components—one to meet the needs of the public school children and the other to meet the needs of the private school children. If the needs of the two groups differ, the statutes governing participation by private school children generally require that different services be designed to meet those different needs. If this is not true under a particular statute, the program regulations will specify an exception.

§ 100b.650 Private schools; purpose of §§100b.651–100b.662.

Comment. One commenter suggested that paragraph (a) be reworded to read ". . . the authorizing statute requires the participation of children enrolled in private schools."

Response. No change has been made. The pertinent statutes require that opportunity for participation of private school children be provided but regulations cannot compel that participation, as the suggested wording could be understood to do. The language of the section has been changed to more clearly specify the requirement, but the substance of the regulations remains the same.

§ 100b.651 Responsibility of a State and a subgrantee.

Comment. One commenter suggested that paragraph (a) read: ". . . its subgrantees provide for the equitable participation of students enrolled in private schools . . ." Another commenter suggested that the word "provide" be used rather than "give."

Response. The changes have been made. The section has been revised to require that a State and its subgrantees provide students enrolled in private schools with a genuine opportunity for equitable participation. The intent of the change is to emphasize that the regulations require fairness in determining program services for students enrolled in private schools.

Comment. One commenter suggested that other words be substituted for the word "benefits" in proposed § 100b.652.

Response. A change has been made. The word has been replaced by the phrase "funds and property that benefit" and proposed § 100b.652 has been incorporated into § 100b.651. In other sections the term "benefits" is used as a generic description of the services that are provided under the various programs to which §§ 100b.650–100b.662 apply. These services vary, depending on the nature of the program.

Other changes. 1. As a result of proposed § 100b.652 being incorporated into § 100b.651, proposed §§ 100b.653–100b.663 have been renumbered as §§ 100b.652–100b.662.

2. Section 100b.651 has been revised to clarify the responsibility of the State agencies that administer these programs.

§100b.652 Consultation with representatives of private school students.

Comment. One commenter suggested that consultation should required only with representatives who have indicated interest in a proposal.

Response. No change has been made. One purpose of consultation is to inform the representatives of the opportunities available under a program. Without consultation, the representatives might not know enough about the program to indicate any interest.

Comment. One commenter suggested that the requirements for prior consultation be dropped entirely as being an unreasonable burden.

Response. No change has been made. Consultation prior to decision is necessary for effective participation, which is required under these program statutes.

Comment. One commenter suggested deletion of proposed paragraph (d)(1), which would have required consultation about an applicant's decision to participate. The commenter said that a decision not to participate in a program should be made solely by the public agency.

Response. A change has been made. As revised, § 100b.652 provides that appropriate representatives of private school students are to be consulted during all phases of the development and design of the project. The list of examples does not include decisions to participate or not to participate since it would be too difficult to determine when those "decisions" are made. The emphasis should be on early and comprehensive consultation, so that the appropriate representatives have a fair opportunity for involvement in the development and design of the project.

Comment. One commenter suggested that a subgrantee should not have to worry about consulting with private school representatives who do not respond after a specified number of unsuccessful attempts to communicate with them. Another commenter was concerned that the regulations would require consultation with every private school in the area. Another commenter asked for clarification of the term "appropriate representatives."

Response. No change has been made. An applicant or subgrantee is required to consult, but the regulations do not require consultation with any representative of private school students who does not respond to reasonable attempts to consult with him or her. EDGAR does not attempt to define the term "appropriate representatives" because the meaning of the term depends on the nature of the program and the local situation.

§ 100b.654 Same or different benefits for private school students.

Comment. One commenter suggested that any differences should be settled at the planning stage and that this section should be deleted. Another commenter suggested that the provisions of proposed paragraph (b) (different services to meet different needs) be made subject to the provisions of proposed paragraph (a) (concentration of funds).

Response. A change has been made. The section has been rewritten to clarify its intent. This section is designed to ensure equitable participation where the needs of the private school students are either the same as or different from those of the public school students. Paragraph (a) of this section, as rewritten, states the general rule that services for private school students must be comparable to services for public school children. In meeting this general rule, paragraph (b) provides, in essence, that when the needs of public and private school students are the same, program services should be the same. Paragraph (c) provides that when needs are different, services must be different. Both paragraphs (b) and (c) are designed to ensure comparable services. It should be noted that paragraph (b) does not authorize concentration of funds or services beyond that authorized under the program statute and regulations. It merely requires that where funds are concentrated, private school children must be given equitable access.

Comment. One commenter suggested that there may be situations in which the needs of private school children may be beyond the skills, interests, and financial resources of the subgrantee.

Response. No change has been made. No situation should arise in which benefits for private school students are beyond the financial resources of the subgrantee, since the benefits for private school students will be federally funded. Nor should a situation arise which is beyond the competence of the public schools, since services for private school children are to be comparable to services for public school children.

Comment. Several commenters suggested dropping the words "who have needs of equal importance" from proposed paragraph (b)(2).

Response. A change has been made. The words have been deleted as unnecessary to the purpose or meaning of the requirements.

§ 100b.655 Level of expenditures for students enrolled in private schools.

Comment. One commenter suggested that this section could result in inequitable funding and should, therefore, be dropped.

Response. No change has been made. The purpose of the section is to provide for equitable services even though there might be unequal costs.

Comment. One commenter suggested that this section implies that the amount spent for private school students can be equal to or greater than the amount spent for public school students. The commenter suggested that, if costs for meeting the needs of public school students are greater, the subgrantee should be able to spend more for public school students.

Response. No change has been made. This section says that "different" amounts may be spent for services for private school students than are spent for public school students. "Different" means "less" or "more," depending on the circumstances. The services must be "comparable," as required by § 100b.654(a) and other sections.

Comment. One commenter suggested that the provision "shall spend a different average amount" is contrary to Title I of the Elementary and Secondary Education Act (ESEA) and that the word "shall" should be changed to "may".

Response. No change has been made. The word "shall" is used in Section 130(a) of ESEA, and § 100b.655 is, therefore, consistent with Title I.

Comment. Two commenters suggested that equal expenditures is not a good way to judge programs and that comparability is preferable.

Response. No change has been made. Comparability of quality, scope, and opportunity for participation (see § 100b.654) is essential regardless of whether the costs are equal. Equal expenditures is acceptable merely as an initial way to compare program services, particularly if the private school children will receive the same services as the public school children. Where service needs are the same, and costs of meeting those needs are comparable, § 100a.655 could provide a basis for auditing expenditures as a method of achieving compliance. Active consideration is being given to this possibility.

§ 10b.656 Information in an application for a subgrant.

Comment. Two commenters suggested that the number of eligible private school children be included as a required item of information in the application.

Response. A change has been made. The comment has been adopted. This information is necessary to assist the State in ensuring that private school students are receiving comparable benefits under a program. To avoid possible misinterpretations, the section requires the applicant to state the number of private school students "who have been identified as eligible." This should avoid putting an unreasonable burden on the applicant, since the information will be that provided by the appropriate representatives of the private school students.

Comment. One commenter suggested that this section be dropped and that

individual program requirements be included in program regulations.

Response. No change has been made. The information required by this section appears to be the minimum needed for a subgrantee to demonstrate that private school children will have an equitable opportunity to participate in a federally assisted program. If the specification of requirements were left to individual program regulations, the likely result would be inconsistent requirements among the programs. Consolidation of requirements should simplify the application process for a school district that applies under several of these programs.

§ 100b.657 Separate classes prohibited.

Comment. One commenter suggested that this section seems to prohibit dual enrollment.

Response. No change has been made. This section permits dual enrollment but prohibits inappropriate segregation of students who are dual enrollees.

§ 100b.658 Funds not to benefit a private school.

Comment. One commenter suggested that the word "eligible" be inserted in paragraph (b) before the phrase "students enrolled in private schools."

Response. No change has been made. These regulations do not impose special eligibility requirements on these children. Eligibility is governed by the program statutes and regulations.

Comment. One commenter suggested dropping paragraph (b). The commenter said paragraph (b)(1) is a repetition of the language of paragraph (a) and that paragraph (b)(2) would appear to be in conflict with the objectives of such programs as ESEA Title IV–B, which provides library resources, textbooks, and other instructional materials to meet the general needs of students in private schools.

Response. No change has been made. Paragraph (b) prohibits the use of funds to meet the needs of a private school or the general needs of the private school students, regardless of the existing level of instruction referred to in paragraph (a). However, this section should not restrict the provision of materials under ESEA Title IV–B, and the ESEA IV–B program regulations will provide an exception.

§ 100b.659 Use of public school personnel.

Comment. One commenter suggested that there may be other reasons than those given in paragraphs (a) and (b) for providing public personnel on other than public premises. These reasons might, for example, include the health and safety of private school children.

Response. A change has been made. The section has been revised to allow public personnel on nonpublic premises if this is necessary to make programs equitable for private school children. This change is intended to cover other appropriate circumstances, including those suggested by the commenter.

§ 100b.660 Use of private school personnel.

Comment. One commenter suggested that this section implies that administrators can be paid for work outside their regular hours of duty and that this is contrary to Title I, ESEA.

Response. No change has been made. This section applies only to employees of private schools, such as teachers, and does not authorize payment to administrative personnel or other costs that would not be allowable under the particular program.

Other changes. The prohibition against a subgrantee's use of program funds to employ individuals who work part-time at a private school has been deleted from § 100b.660 as being unduly restrictive. Unless specifically restricted by statute (e.g., see 45 CFR Part 134—regulations under Title IV, ESEA), part-time employment by a private school should not automatically disqualify a person from being employed by a subgrantee—for other time periods—to provide program services.

§ 100b.661 Equipment and supplies.

Comment. Two commenters suggested that the term "limited period of time" in paragraph (b), concerning placement of equipment and supplies in a private school, is misleading and vague and that more specific language would be preferable.

Response. A change has been made to clarify the meaning of the requirement.

Comment. One commenter suggested that paragraph (d) on removal of equipment and supplies be dropped as being implicit in the provisions of paragraph (c), which applies to use and installation of equipment and supplies in private schools.

Response. No change has been made. The language in paragraph (c) requires that it must be feasible to remove equipment and supplies from a private school without remodeling the premises, while paragraph (d) requires removal under specified conditions. The two paragraphs are complementary, not redundant.

§ 100b.680 Inventions and patents. [Proposed]

Changes. Section 100b.680 has been deleted. EDGAR will not regulate on this subject for State-administered programs.

Other Requirements for Certain Programs

§§ 100b.682–100b.685 [Proposed]

Changes. These sections have been renumbered as §§ 100b.681–100b.684. Section 100b.681 has been conformed to the wording in § 100a.681.

General Administrative Responsibilities

§ 100b.701 The State or subgrantee administers or supervises each project.

Comment. Several commenters suggested that the language of this section may prohibit contracting or subcontracting for services that the subgrantee may need but cannot provide itself.

Response. A change has been made. The intent of the section is to prevent the transfer of legal or fiscal responsibility but not to preclude appropriate contracts. The change corresponds to a similar change to § 100a.701. (See the discussion under that section in this appendix.)

§ 100b.703 When a State may begin to obligate funds.

Comment. Several commenters suggested that the term "substantially approvable" be defined so that the States are aware promptly of the date on which they can begin to obligate funds. One of these commenters suggested that the Commissioner promptly inform the States of the date when they could being to obligate funds even though some negotiation would be necessary to make the State plan fully approvable.

Response. A change has been made in accordance with the last suggestion. However, the term "substantially approvable" is retained to give the Commissioner flexibility in determining when a plan is close enough to begin approvable to allow a State to begin to obligate funds. This flexibility is necessary because of the wide variations among program statutes and State laws and procedures that affect the content of State plans.

Other changes. Redesignated paragraph (a) has been revised to clarify standards regarding submission of State plans. The date of submission will be determined in the same manner as for applications under Part 100a. A new paragraph (b) provides the standards for determining the date that a State plan was mailed. Proposed paragraph (b) has been redesignated as paragraph (c).

§ 100b.704 When subgrantees may begin to obligate funds.

Comment. One commenter suggested that redesignated paragraph (c)(2) implies that an applicant may begin to obligate funds the moment the application is submitted, whether the State has approved it or not.

Response. A change has been made. The section has been revised to recognize that a State must give authorization before an applicant for a subgrant may begin to obligate funds.

Other changes. 1. A new paragraph (b) has been added to recognize that authorization of obligations is subject to the State's final approval of an application.

2. A new paragraph (c) recognizes the State's authority to approve "pre-agreement" costs under programs in which the applicant for a subgrant is not entitled to the funds.

Cross-reference.—See § 100b.707(h) of EDGAR.

§ 100b.705 Funds may be obligated during a "carryover period."

Comment. One commenter suggested that this section may conflict with the Tydings Amendment.

Response. No change has been made. This section of the regulations restates the Tyding Amendment (Section 412(b) of GEPA) and is not in conflict with it.

§ 100b.706 Obligations made during a carryover period are subject to current statutes, regulations, and applications.

Comment. One commenter suggested that the term "State plan" is more restrictive than the statute on which this section is based, and that the term "other document * * * required" is broader than the statute.

Response. A change has been made so that the terms in this section are consistent with the purpose of the statute (Section 412(b) of GEPA). The term "State plan," as defined in § 100b.102 and as used in this section, includes the terms "program plan" and "application," as used in Section 412(b) of GEPA, and is, therefore, consistent with the provisions of that statute. The term "other document" has been deleted as inappropriate and unnecessary.

Note.—Section 2(b) of Pub. L. 96-46 (enacted August 6, 1979) provides that Section 412(b)(2) of GEPA, which is reflected in § 100b.706, does not take effect with respect to the use of funds under Section 421 of the ESEA (Title IV-B—Instructional Materials and School Library Resources Program) until October 1, 1980, except at the option of local educational agencies. This section of EDGAR will, therefore, have a delayed effective date to this extent.

§ 100b.707 When obligations are made.

Comment. One commenter asked if there is a time limit on the performance of personal services by a contractor or if the services may be performed after the end of the project period.

Response. No change has been made. The contract for personal services establishes the period for the performance of those services. The services should be performed within the project period approved by the State. However, there is no provision in Part 100b that is comparable to § 100a.261 (Extension of a project period). This is a matter left to State administration.

Comment. One commenter suggested that this section should make clear that a ruling by the Internal Revenue Service that a personal service contractor is actually an employee, rather than a contractor, does not affect the date the Education Division considers the obligation to have been made.

Response. No change has been made. If the personal services contract was entered into legally, and in good faith that the arrangement was not an employee-employer relationship, the provisions of paragraph (c) would be considered binding by the Education Division, even if the Internal Revenue Service ruled, for its own purposes, that the relationship is that of an employer and an employee.

Comment. One commenter suggested that personal services by a contractor should be considered to constitute obligations at the time the services are performed, rather than on the date the grantee makes a binding written commitment for the personal services.

Response. No change has been made. To achieve the purposes of the project, performance under a personal services contract may be necessary after the end of the project period. The Education Division may wish to reimburse grantees in these circumstances, and therefore has not adopted the comment.

Changes. A new paragraph (h) has been added to recognize the State's authority to approve preagreement costs. (See also § 100b.704(c).)

Note.—Under § 100b.707(b), the phrase "personal services by an employee of the State or subgrantee" refers only to services that are within the scope of the employment agreement.

§ 100b.720 Financial and performance reports by a State.

Comment. One commenter asked the following:

1. Who establishes the reporting format?

2. Can the Commissioner require reports more often than annually?

Response. No change has been made.

1. The Commissioner establishes the reporting forms.

2. The Commissioner may require reports more often than annually if the conditions in 45 CFR 74.7 or 45 CFR 74.72(e) exist.

Reports

§ 100b.722 A subgrantee makes reports required by the State.

Changes. Proposed § 100b.721 has been renumbered as § 100b.722 to conform more closely to numbering used in Part 100a.

Records

§ 100b.730 Records related to grant funds.

Comment. One commenter suggested that the requirement for a State or subgrantee to keep records that fully show the "share of that cost provided from other sources" will add a burden to reporting.

Response. No change has been made. The requirement to keep records of those costs is in Section 437(a) of GEPA and cannot be waived.

§ 100b.731 Records related to compliance.

Comment. One commenter suggested that the regulations should specifically identify the statutes listed in § 100b.500 as being covered by this section.

Response. A change has been made. This section does not require the retention of records relating to the statutes identified in § 100b.500. Those records are subject to the regulations referenced in § 100b.500, not to the requirements of EDGAR. The change is intended to make this distinction by limiting the recordkeeping responsibility to "program requirements." (See the discussion under § 100a.731 in this appendix.)

§ 100b.734 Record retention period.

Comment. Three commenters noted that the five-year retention period differed from other periods identified elsewhere, particularly in 45 CFR Part 74 which establishes a retention period of three years. They suggested that this be clarified.

Response. A change has been made. The regulations in 45 CFR Part 74 are subject to any inconsistent statutory provisions. For Education Division programs, the five-year period in Section 437 of GEPA controls the minimum retention period. The change makes it clear that records must be retained for five years unless 45 CFR Part 74 requires a longer period, such as during an ongoing audit procedure. (See 45 CFR 74.21(b).)

Comment. One commenter suggested that subgrantees be given permission to dispose of fiscal documentation prior to the end of the five-year retention period if a Federal audit has been completed.

Response. No change has been made. The statutory authority for the five-year retention period (Section 437(a) of GEPA) makes no provision for shortening the records retention period in situations in which Federal audits have been completed.

Privacy

§ 100b.741 Protection of students' privacy in research and testing.

Comment. One commenter asked if this section applied both to State-administered and to direct grant programs. The commenter asked specifically what programs are covered.

Response. No change has been made. The regulations in Part 100b relate only to the programs listed in the table in § 100b.1, but there is a similar provision in Part 100a (§ 100a.741) that applies to all programs listed in § 100a.1. The statute on which these sections of EDGAR are based applies to all Office of Education programs.

Changes. This section has been revised to include the statutory material that was referenced in the proposed regulations.

Use of Funds by States and Subgrantees

§ 100b.761 Federal funds may pay 100 percent of costs.

Comment. One commenter suggested that the provisions of this section appear to be in conflict with 45 CFR 121a.186 of the program regulations under the Education of the Handicapped Act.

Response. No change has been made. Paragraph (b) of this section excludes programs in which the statute or implementing regulations limit the allowability of costs. 45 CFR 121a.186 establishes limits on costs that may be paid with program funds. Section 100b.761, therefore, does not apply to the projects to which the limitations in § 121a.186 apply.

Use of Funds by States and Subgrantees

§§ 100b.760 and 100b.761

Other changes. Proposed §§ 100b.750 and 100b.751 have been renumbered as §§ 100b.760 and 100b.761, respectively.

State Administrative Responsibilities

§ 100b.770 A State shall perform certain duties with respect to applications for subgrants.

§ 100b.771 A State shall encourage eligible applicants to apply.

Comment. One commenter asked what administrative responsibilities and reporting requirements will be made of the States.

Responses. No change has been made. The requirements in §§ 100b.700 and 100b.771 are the minimum that a State should undertake to conduct a sound administrative operation of a Federal program. The Commissioner has established no criteria for determining compliance beyond the regulations contained in EDGAR and in individual program regulations. These sections in EDGAR do not create or impose any new reporting requirements.

Comment. One commenter asked if "eligible applicant" refers to those so identified in the respective grant proposal announcement. Another commenter suggested that "encourage" might involve a big burden and suggested that only a "reasonable effort" be required.

Response. A change has been made to clarify the extent of the State's duty to encourage applicants to seek awards. "Eligible applicant" refers to those identified in the statute and the implementing regulations for a program.

Comment. One commenter suggested that the State be required to encourage only "known" eligible applicants. Another commenter suggested some specific procedures for encouraging eligible applicants to apply.

Response. A change has been made. The word "all" has been deleted to make it clear that a State's duty is to make reasonable efforts, as suggested in the preceding comment. With respect to specific procedures, it is preferable to let States establish their own procedures rather than trying to establish uniform procedures for all States, since circumstances may vary from program to program and State to State (e.g., populous, heavily urbanized States as compared to thinly populated, largely rural States).

§ 100b.772 Other responsibilities of the State.

Comment. One commenter suggested that, in the spirit of paperwork reduction, the Commissioner limit the power of the States to impose special regulations, procedures, etc. Another commenter asked for recognition of the State's authority to regulate.

Response. No change has been made. If the State has the legal responsibility to administer a federally funded program, the State must have the authority to establish reasonable rules and procedures. However, State rules and procedures should be designed in a way that minimize burden on applicants and be directly related to furthering the Federal program purpose.

Changes. 1. Paragraph (a) has been rewritten to require that a State provide general technical assistance and also assistance in the evaluation of projects. Under the proposed section, a State would have been required to provide technical assistance only with respect to evaluation of projects.

2. Paragraphs (b) and (c) have been revised to clarify the relationship of § 100b.772 to programs under Title I and IV of ESEA.

Complaint Procedures of a State

§ 100b.780 A State shall adopt complaint procedures.

Comment. One commenter questioned why the exemptions for Titles I and IV of ESEA provided for in this section are not stated in the same way.

Response. A change has been made. Paragraphs (b) and (c) have been revised to clarify the relationship of this section to the program under Title IV of ESEA. The difference in treatment between programs under Titles I of ESEA and those under Title IV of ESEA results from statutory provisions enacted in the Education Amendments of 1978.

Comment. One commenter suggested that the requirements in this section are excessive and appear to be contrary to the requirements in § 100b.781 (as renumbered).

Response. No change has been made. This section requires the State to establish complaint procedures; § 100b.781 contains certain minimum requirements that must be included in the procedures adopted under this section. The Commissioner believes that these two sections are the minimum necessary to protect the public, the State, and the subgrantees. To clarify the relationship between §§ 100b.781 and 100b.782, the sections have been transposed and renumbered accordingly.

§ 100b.781 Minimum complaint procedures.

Comment. One commenter suggested that this section not apply to due process procedures for students.

Response. No change has been made. The minimum procedures in § 100b.781

relate only to those complaints identified in § 100b.780.

Changes. The section has been revised to make it clear that a State has sixty calendar days from its receipt of a complaint to resolve the complaint. This time limit may be extended only if exceptional circumstances exist with respect to a particular complaint.

§ 100b.783 State educational agency action—subgrantee's opportunity for a hearing.

Other changes. This new section restates Section 425 of GEPA regarding a subgrantee's right to a hearing under certain programs.

Subpart H—What Procedures Does the Commissioner Use to Get Compliance?

§ 100b.900 Waiver of regulations prohibited.

Comment. One commenter said that paragraph (b) has the legal effect of holding the Federal Government harmless with respect to the acts of its agents.

Response. No change has been made. Paragraph (a) provides that no Federal official has any authority to waive any regulations unless the regulations specifically provide for a waiver. Paragraph (b) provides that, even if a Federal official purports to waive regulations, that individual has no authority to do so, and no one should rely on the purported waiver. This section is a formal notice to that effect.

§ 100b.901 Regulations in 45 CFR Part 74 on suspension and termination. (Proposed)

Changes. This section has been deleted. The Education Appeal Board procedures in Part 100d will govern all suspension and termination proceedings for Office of Education programs.

Note.—The procedures for the Education Appeal Board were published originally as interim final regulations (45 CFR Part 100e) in the Federal Register on May 25, 1979 (44 FR 30528).) When published as final regulations today, Part 100e will be redesignated as Part 100d of EDGAR. These regulations are referenced in EDGAR as Part 100d in order to avoid confusion after Part 100d is published in final.

§§ 100b.901–100b.902 Commissioner's compliance procedures.

Changes. Proposed §§ 100b.902 and 100b.903 have been renumbered as §§ 100b.901 and 100b.902. Certain technical corrections also have been made in the wording of these sections.

PART 100c—DEFINITIONS

§ 100c.1 General.

Comment. One commenter suggested that EDGAR include a definition of "consultant."

Response. No change has been made. Since there is no intent to attach a special meaning to the term "consultant," no definition is needed.

Comment. One commenter said that because EDGAR allows each State to determine the scope of the term "elementary school," some States that extend the term to include preschool programs might misspend program funds intended to serve grades 1 through 8.

Response. No change has been made. If program funds are authorized only for grades 1 through 8, the regulations for the program will specify the restriction, and will not use the term "elementary school" to describe allowable activities.

Comment. One commenter suggested that the definition of "fiscal year" be changed to indicate that the term refers to a period that corresponds to the Federal fiscal year.

Response. A change has been made. The revised definition makes it clear that it is a period concurrent with the Federal fiscal year, October 1 through September 30.

Comment. One commenter suggested that a definition for "institution of higher education" be included in EDGAR.

Response. No change has been made. Because of variations among program statutes that define "institution of higher education," a general definition is not included in EDGAR.

Comment. Several commenters suggested that the definition of "local educational agency" be broadened to include community colleges and post-secondary institutions.

Response. A change has been made. The revised definition makes it clear that for purposes of the Vocational Education Program, the term includes any institution that provides a vocational education program. Other statutes that define "local educational agency" preclude a broader definition.

Comment. One commenter suggested that the distinction between "private" and "nonpublic" should be made clearer.

Response. A change has been made. The definition of "nonpublic" has been rephrased to indicate that the difference between "nonpublic" and "private" is that "nonpublic" applies only to nonprofit agencies, organizations, and institutions.

Comment. One commenter suggested that EDGAR include a definition for "post-secondary educational institution" as it appears in the regulations for the Vocational Education Act.

Response. No change has been made. The definition of "post-secondary educational institution" that appears in the regulations for vocational education programs is not applicable to other education programs. The definition will continue to appear in the regulations implementing the Vocational Education Act.

Comment. Several commenters suggested that EDGAR should define the term "private school."

Response. No change has been made. A definition of "private school" could have a significant effect on the eligibility of certain students for participation in Federal education programs. For this reason, the Education Division will consider publishing a proposed definition for private school at a later date, and allow the public an opportunity to comment. Any suggestions regarding a general definition would be welcome. Suggestions may be sent to the contact person named in the preamble to the EDGAR regulations.

Comment. One commenter wanted clarification of the term "service function" with respect to a local educational agency.

Response. No change has been made. "service function" is a statutory term used in the definition of local educational agency. The definition of service function allows certain kinds of intermediate educational units to qualify as local educational agencies.

Comment. One commenter asked for the development of definitions that are consistent with definitions used by other Federal departments and agencies.

Response. No change has been made. Because Federal regulations must use terms as they are used in Federal statutes, separate regulations will continue to use different definitions as long as inconsistencies remain in the statutes. However, the Education Division—and the Department of Education when that agency takes effect—will continue to work toward the use of common definitions for terms used in Federal educational program regulations, as has been done in EDGAR.

Appendix B

PART 74—ADMINISTRATION OF GRANTS

As revised on August 2, 1978 (43 FR 34076).

Note.—Part 74 is republished as Appendix B to the EDGAR final regulations to assist readers in following cross-references to Part

74. This will not be published with Parts 100a–100d in the CFR.

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Authority: 5 U.S.C. 301.

Subpart A—General

§ 74.1 Purpose and scope of this part.

This part establishes uniform requirements for the administration of HEW grants and principles for determining costs applicable to activities assisted by HEW grants.

§ 74.2 Scope of subpart.

This subpart contains general rules pertaining to this Part 74 (definitions, purpose and scope, applicability, and appeals) and procedures for control of deviations from the part.

§ 74.3 Definitions.

As used in this part:

"Awarding party" means (1) with respect to a grant, the granting agency, and (2) with respect to a subgrant, the grantee. (See § 74.4(b))

"Contract" means (except as used in the definitions for "grant" and "subgrant" in this section and except where qualified by "Federal") a procurement contract under a grant or subgrant, and "subcontract" means a procurement subcontract under such a contract.

"Cost-type contract" means a contract or subcontract in which the contractor or subcontractor is paid on the basis of the costs it incurs, but the term does not include such subcontracts under a non-cost-type contract or subcontract.

"Expenditure report" means: (1) For nonconstruction grants, the "Financial Status Report" (or other equivalent report); (2) for construction grants, the "Outlay Report and Request for Reimbursement for Construction Programs" (or other equivalent report). (See subpart I of this part.)

"Federally recognized Indian tribal government" means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat. 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs. However, for policies applicable to tribal government hospitals and institutions of higher education, see § 74.4(c), "Applicability of this part."

"Government" means a State or local government or a Federally recognized Indian tribal government. However, for policies applicable to government hospitals and institutions of higher education, see § 74.4(c), "Applicability of this part."

"Grant" means an award of financial assistance in the form of money, or property in lieu of money, by the Federal Government to an eligible recipient. The term includes such financial assistance when provided by contract, but does not include any Federal procurements subject to the procurement regulations in 41 CFR, nor does it include technical assistance, which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, which the recipient is not required to account for on an actual cost basis.

"Grantee" means the government, nonprofit corporation, or other legal entity to which a grant is awarded and which is accountable to the Federal Government for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the award document. For example, a grant award document may name as the grantee an agency of a State, or one school or campus of a university. In these cases, the granting agency usually intends, or actually requires, that the named component assume primary or sole responsibility for administering the grant-assisted project or program. Nevertheless, the naming of a component of a legal entity as the grantee in a grant award document shall not be construed as relieving the whole legal entity from accountability to the Federal Government for the use of the funds provided. (This definition is not intended to affect the eligibility provisions of grant programs in which eligibility is limited to organizations, such as State welfare departments, which may be only components of a legal entity.) The term "grantee" does not include any secondary recipients such as subgrantees, contractors, etc., who may receive funds from a grantee pursuant to a grant.

"Granting agency" means any organizational component of HEW authorized to award and administer grants.

"HEW" means the U.S. Department of Health, Education, and Welfare.

"Local government" means a local unit of government including specifically a county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under State law), "sponsor or sponsoring local organization" of a watershed project (as defined in 7 CFR 620.2, 40 FR 12472, March 19, 1975), any other regional or interestate government entity, or any agency or instrumentality of a local government. However, for policies applicable to government hospitals and institutions of higher education, see § 74.4(c), "Applicability of this part."

"OGP" means the Office of Grants and Procurement, which is an organizational component within the Office of the Secretary, HEW, and reports to the Assistant Secretary for Management and Budget.

"OMB" means the Office of Management and Budget within the Executive Office of the President.

"Recipient" means grantee or subgrantee. (See § 74.4(b).)

"State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. However, for policies applicable to government hospitals and institutions of higher education, see § 74.4(c), "Applicability of this part."

"Subgrant" means an award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee. The term includes financial assistance when provided by contract, but does not include procurements; nor does it include any form of assistance which is excluded from the definition of "grant" in this section.

"Subgrantee" means the government, nonprofit corporation, or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided. The subgrantee is the entire legal entity even if only a particular component of the entity is designated in the subgrant award document.

"Terms of a grant or subgrant" means all requirements of the grant or subgrant, whether in statute, regulations, the award document or elsewhere.

§ 74.4 Applicability of this part.

(a) *General.* Except where inconsistent with Federal statutes, regulations, or other terms of a grant, this part applies to all HEW grants. However, unless expressly made applicable by the granting agency, this part shall not apply when the grantee is a Federal agency, foreign government or organization, international organization such as the United Nations, for-profit organization, or individual.

(b) *Subgrants.* For each substantive provision in this part, either the language of the provision itself or other text in the same subpart will indicate whether the provision affects only grants, only subgrants, or both. Use of the term "recipient" (as defined in § 74.3) in a provision shall be taken as referring equally to grantees and subgrantees. Similarly, use of the term "awarding party" (as defined in § 74.3) shall be taken as referring equally to granting agencies and to grantees awarding subgrants. However, unless expressly made applicable by the granting agency, this part need not be applied by the grantee to a subgrant if the subgrantee is a Federal agency, foreign government or organization, international organization such as the United Nations, for-profit organization, or individual.

(c) *Public institutions of higher education and hospitals.* Grants and subgrants to institutions of higher education and hospitals operated by a government shall be subject only to provisions of this subpart that apply to nongovernmental organizations.

§ 74.5 Appeals.

In accordance with parts 16 and 75 of this title, grantees may appeal certain postaward administrative decisions made by HEW officials.

§ 74.6 Deviations.

(a) Except as provided in § 74.7, a deviation is any exception to this part not required by Federal statute without allowance of agency discretion. A deviation may be either:

(1) Use of any policy, procedure, form, standard, or grant or subgrant term which is inconsistent with an applicable provision of this part, or

(2) Failure to use any applicable policy, procedure, form, standard, or grant or subgrant term which is required by this part.

(b) In order to maintain uniformity to the greatest extent feasible, deviations shall be kept to a minimum. A deviation, whether proposed by an applicant, a recipient, or an official of the granting agency, may be authorized only when it is necessary to meet programmatic objectives, or to conserve grant funds, or when it is otherwise essential in the public interest.

(c) Except as provided in paragraph (d) of this section, a deviation from this part may be made only when authorized by both:

(1) The head of the granting agency or other officials if designated in or pursuant to formal deviation control procedures established by the agency, and

(2) OGP.

(d) Deviations from subpart Q of this part and appendixes C, D, E, and F to this part in individual cases (i.e., where only a single grant or subgrant is involved) shall not require OGP approval.

§ 74.7 Special grant or subgrant conditions.

(a) Without regard to the deviation control procedures of § 74.6, special grant conditions more restrictive than those prescribed in this part 74 may be imposed as needed when the granting agency has determined that the grantee:

(1) Is financially unstable,

(2) Has a history of poor performance, or

(3) Has a management system which does not meet the standards of this part.

(b) When special conditions are imposed under paragraph (a) of this section, the grantee will be notified in writing:

(1) Why the special conditions were imposed and

(2) What corrective action is needed.

Furthermore, in accordance with OMB Circulars A–102 and A–110, OMB and other Federal agencies in a granting relationship with the grantee will be provided copies of the notice to the grantee.

(c) Grantees may apply the provisions of paragraphs (a) and (b) of this section to their subgrantees. Whenever they do so, a copy of the notice to the subgrantee shall be furnished to the granting agency.

Subpart B—Cash Depositories

§ 74.10 Physical segregation and eligibility.

Except as provided in § 74.11, awarding parties shall not impose grant or subgrant terms which:

(a) Require the recipient to use a separate bank account for the deposit of grant or subgrant funds, or

(b) Establish any eligibility requirements for banks or other financial institutions in which recipients deposit grant or subgrant funds.

§ 74.11 Checks-paid basis letter of credit.

A separate bank account shall be used when payments under letter of credit are made on a "checks-paid" basis. A checks-paid basis letter of credit is one under which funds are not drawn until the recipient's checks have been presented to its bank for payment. (See Subpart K for definition of "letter of credit.")

§ 74.12 Minority-owned banks.

Consistent with the national goal of expanding opportunities for minority business enterprises, grantees and subgrantees are encouraged to use minority-owned banks. Upon request, OGP will furnish a list of minority-owned banks.

Subpart C—Bonding and Insurance

§ 74.15 General.

In administering grants and subgrants, recipients shall observe their regular requirements and practices with respect to bonding and insurance. No additional bonding and insurance requirements, including fidelity bonds, shall be imposed by the terms of the grant or subgrant except as provided in §§ 74.16 through 74.18.

§ 74.16 Construction and facility improvement.

(a) *Scope of this section.* This section covers requirements for bid guarantees, performance bonds, and payments bonds when the recipient will contract for construction or facility improvement (including alterations and renovations of real property) under a grant or subgrant.

(b) *Definitions.* (1) "Bid guarantee" means a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, if its bid is accepted, execute the required contractual documents within the time specified.

(2) "Performance bond" means a bond executed in connection with a contract to secure fulfillment of all the contractor's obligations under the contract.

(3) "Payment bond" means a bond executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(c) *Bids and contacts of $100,000 or less.* The recipient shall follow its own requirements and practices relating to bid guarantees, performance bonds, and payment bonds.

(d) *Bids and contracts exceeding $100,000.* The recipient may follow its own regular policy and requirements if the HEW granting agency has determined that the Federal Government's interest will be adequately protected. If this determination has not been made, the minimum requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to 5 percent of the bid price;

(2) A performance bond on the part of the contractor for 100 percent of the contract price; and

(3) A payment bond on the part of the contractor for 100 percent of the contract price.

§ 74.17 Fidelity bonds.

(a) If the grantee is not a government, the granting agency may require it to carry adequate fidelity bond coverage where the absence of coverage for the grant-supported activity is considered as creating an unacceptable risk.

(b) If the subgrantee is not a government, the granting agency or the grantee may require that it carry adequate fidelity bond coverage where the absence of coverage for the subgrant-supported activity is considered as creating an unacceptable risk.

(c) A fidelity bond is a bond indemnifying the recipient against losses resulting from the fraud or lack of integrity, honesty or fidelity of one or more employees, officers or other persons holding a position of trust.

§ 74.18 Source of bonds.

Any bonds required under §§ 74.16(d)(1) through (3) or 74.17 shall be obtained from companies holding certificates of authority as acceptable sureties (31 CFR Part 223). A list of these companies is published annually by the Department of the Treasury in its Circular 570.

Subpart D—Retention and Access Requirements for Records

§ 74.20 Applicability.

(a) Except as provided in paragraph (b) of this section, this subpart applies to all financial and programmatic records, supporting documents, statistical records and other records of recipients and of contractors and subcontractors under grants and subgrants, which are:

(1) Required to be maintained by the terms of an HEW grant, or

(2) Otherwise reasonably considered as pertinent to an HEW grant.

(b) This subpart does not apply to records maintained by the contractor or subcontractor for any of the following types of awards it has received under a grant or subgrant:

(1) Any contract or subcontract of $10,000 or less, or

(2) Any contract or subcontract awarded using the formal advertising method of procurement, whether or not required to be so awarded, or

(3) Any subcontract awarded under a contract or subcontract described in paragraph (b)(2) of this section.

§ 74.21 Length of retention period.

(a) Except as provided in paragraphs (b) and (c) of this section, records shall be retained for 3-years from the starting date specified in § 74.22.

(b) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

(c) In order to avoid duplicate recordkeeping, awarding parties may make special arrangements with recipients to retain any records which are continuously needed for joint use. The awarding party will request transfer of records to its custody when it determines that the records possess long-term retention value. When the records are transferred to or maintained by the awarding party the 3-year retention requirement is not applicable to the recipient.

§ 74.22 Starting date of retention period.

(a) *General.* (1) Where HEW grant support is continued or renewed at annual or other intervals, the retention period for the records of each funding period starts on the day the grantee submits to HEW its single or last expenditure report for that period. However, if HEW grant support is continued or renewed quarterly, the retention period for each year's records starts on the day the grantee submits to HEW its expenditure report for the last quarter of the Federal fiscal year. In all other cases, the retention period starts on the day the grantee submits its final expenditure report to HEW. If an expenditure report has been waived, the retention period starts on the day the report would have been due. "Expenditure report" is defined in § 74.3.

(2) Exceptions to this paragraph are contained in paragraphs (b) through (d) of this section.

(b) *Equipment records.* The retention period for the equipment records required by § 74.140(a) starts from the date of the equipment's disposition (§ 74.139) or replacement (§ 74.138) or transfer at the direction of the awarding party (§ 74.136).

(c) *Records for income transactions after grant or subgrant support.* (1) In some cases an HEW requirement concerning the disposition of program income, as defined in subpart F of this part, will be satisfied by applying the income to costs incurred after expiration or termination of grant or subgrant support for the activity giving rise to the income. In such a case, the retention period for the records pertaining to the costs starts from the end of the recipient's fiscal year in which the costs are incurred.

(2) In some cases, there may be an HEW requirement concerning the disposition of copyright royalties or other program income which is earned after expiration or termination of grant or subgrant support. Where there is such a requirement, the retention period for the records pertaining to the earning of the income starts from the end of the recipient's fiscal year in which the income is earned. (See subpart F of this part.)

(d) *Indirect cost rate proposals, cost allocation plans, etc.*—(1) *Applicability.* This paragraph applies to the following types of documents, and their supporting records:

(i) Indirect cost rate computations or proposals;

(ii) Cost allocation plans under Appendix C to this part;

(iii) Hospital patient care rate computations or proposals; and

(iv) Any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(2) *If submitted for negotiation.* If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the grantee) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(3) *If not submitted for negotiation.* If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the grantee) for negotiation purposes, then the 3-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

§ 74.23 Substitution of microfilm.

Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

§ 74.24 Access to records.

(a) *Records of grantees.* HEW and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any books, documents, papers, or other records of the grantee which are pertinent to the HEW grant, in order to make audit, examination, excerpts, and transcripts.

(b) *Records of subgrantees.* HEW, the Comptroller General of the United States, and the grantee, or any of their authorized representatives, shall have the right of access to any books, documents, papers, or other records of the subgrantee which are pertinent to the HEW grant, in order to make audit, examination, excerpts, and transcripts.

(c) *Records of contractors and subcontractors.* Except as provided in § 74.20(b), HEW, the Comptroller General of the United States, the grantee, and (if the contract was awarded under a subgrant) the subgrantee, or any of their authorized representatives, shall have the right of access to any books, documents, papers, or other records of the contractor or subcontractor which are pertinent to the HEW grant, in order to make audit, examination, excerpts, and transcripts.

(d) *Expiration of right of access.* The rights of access in this section shall not be limited to the required retention period but shall last as long as the records are retained.

§ 74.25 Restrictions on public access.

Unless required by Federal statutes, awarding parties may not impose grant or subgrant terms which limit public access to records covered by this subpart except after a determination by the granting agency that the records must be kept confidential and would have been excepted from disclosure under HEW's "Freedom of Information" regulation (Part 5 of this title) if the records had belonged to HEW. This section does not require recipients or their contractors and subcontractors to permit public access to their records.

Subpart E—Waiver of Single State Agency Requirements

§ 74.30 Policy.

Requests to HEW from Governors, or other duly constituted State authorities, for waiver of single State agency requirements in accordance with section 204 of the Intergovernmental Cooperation Act of 1968 will be given expeditious handling. Whenever possible, such requests will be granted.

Subpart F—Grant-Related Income

§ 74.40 Scope of subpart.

This subpart contains policies and requirements relating to (a) program income and (b) interest and other investment income earned on advances of grant funds.

§ 74.41 Meaning of program income.

(a) Except as explained in paragraphs (b) and (c) of this section, program income means gross income earned by a recipient from activities part or all of the cost of which is either borne as a direct cost by a grant or counted as a direct cost towards meeting a cost sharing or matching requirement of a grant. It includes but is not limited to such income in the form of fees for services performed during the grant or subgrant period, proceeds from sale of tangible personal or real property, usage or rental fees, and patent or copyright royalties. If income meets this definition, it shall be considered program income regardless of the method used to calculate the amount paid to the recipient—whether, for example, by a cost-reimbursement method or fixed price arrangement. Nor will the fact that the income is earned by the recipient from a Federal procurement contract or from a procurement contract under a Federal grant awarded to another party affect the income's classification as program income.

(b) For research grants that are subject to an institutional cost-sharing agreement, income shall be considered program income only if it is earned from an activity part or all of the cost of which is borne as a direct cost by the Federal grant funds. An institutional cost-sharing agreement is one entered into between HEW and a grantee covering all of HEW's research project grants to the grantee in the aggregate.

(c) The following shall not be considered program income:

(1) Revenues raised by a government recipient under its governing powers, such as taxes, special assessments, levies, and fines. (However, the receipt and expenditure of such revenues shall be recorded as a part of grant or subgrant project transactions when such revenues are specifically earmarked for the project in accordance with the terms of the grant or subgrant.)

(2) Tuition and related fees received by an institution of higher education for a regularly offered course taught by an employee performing under a grant or subgrant.

(d) For the purposes of this subpart, program income is divided into several categories. Each category is treated in a separate section of this subpart.

§ 74.42 General program income.

(a) *Definition.* General program income means all program income accruing to a grantee during the period of grant support or to a subgrantee during the period of subgrant support, other than the special categories of such income treated in §§ 74.43 through 74.45.

(b) *Use.* (1) General program income shall be retained by the recipient and used in accordance with one or a combination of the alternatives in paragraphs (c), (d), and (e) of this section, as follows: The alternative in paragraph (c) may always be used by recipients and must be used if neither of the other two alternatives is permitted by the terms of the grant. The alternatives in paragraphs (d) or (e) may be used only if expressly permitted by the terms of the grant. In specifying alternatives that may be used, the terms of the grant may distinguish between income earned by the grantee and income earned by subgrantees and between the sources, kinds, or amounts of income.

(2) The terms of a subgrant may restrict the use of general program income earned by the subgrantee to only one or some of the alternatives permitted by the terms of the grant, but the alternative in paragraph (c) of this section shall always be permitted.

(c) *Deduction alternative.* (1) Under this alternative, the income is used for allowable costs of the project or program. If there is a cost-sharing or matching requirement, costs borne by the income may not count toward satisfying that requirement. Therefore, the maximum percentage of Federal participation is applied to the net amount determined by deducting the income from total allowable costs and third-party in-kind contributions. The income shall be used for current costs unless the granting agency authorizes deferral to a later period.

(2) To illustrate this alternative, assume a project in which the grantee incurs $100,000 of allowable costs and receives no third-party in-kind contributions. If the grantee earns $10,000 in general program income and this alternative applies, that $10,000 must be deducted from the $100,000 before applying the maximum percentage of Federal participation. If that pecentage is 90 percent, the most that could be paid to the grantee would therefore be $81,000 (90 percent times $90,000).

(d) *Cost-sharing or matching alternative.* (1) Under this alternative, the income is used for allowable costs of the project or program but, in this case, the costs borne by the income may count toward satisfying a cost-sharing or matching requirement. Therefore, the maximum percentage of Federal participation is applied to total allowable costs and third-party in-kind contributions. The income shall be used for current costs unless the granting agency authorizes deferral to a later period.

(2) To illustrate this alternative, assume the same situation as in paragraph (c)(2) of this section. Under this alternative, the 90 percent maximum pecentage of participation would be applied to the full $100,000, and $90,000 could therefore be paid to the grantee. (It should be noted that if $20,000 of general program income is earned, only $80,000 could be paid, since a grant cannot pay for costs which have been borne by general program income.)

(e) *Additional costs alternative.* Under this alternative, the income is used for costs which are in addition to the allowable costs of the project or program but which nevertheless further the objectives of the Federal statute under which the grant was made. Provided that the costs borne by the income further the broad objectives of that statute, they need not be of a kind that would be permissible as charges to Federal funds.

Examples of purposes for which the income may be used are:

(1) Expanding the project or program.

(2) Continuing the project or program after grant or subgrant support ends.

(3) Supporting other projects or programs that further the broad objectives of the statute.

(4) Obtaining equipment or other assets needed for the project or program or for other activities that further the statute's objectives.

§ 74.43 Program income—proceeds from sale of real property and from sale of equipment and supplies acquired for use.

The following kinds of program income shall be governed by subpart O of this part:

(a) Proceeds from the sale of real property purchased or constructed under a grant or subgrant.

(b) Proceeds from the sale of equipment and supplies fabricated or purchased under a grant or subgrant and intended primarily for use in the grant- or subgrant-supported project or program rather than for sale or rental.

§ 74.44 Program income—royalties and other income earned from a copyrighted work.

(a) This section applies to royalties, license fees, and other income earned by a recipient from a copyrighted work developed under the grant or subgrant. Income of that kind is covered by this section whether a third party or the recipient itself acts as the publisher, seller, exhibitor, or performer of the copyrighted work. In some cases the recipient incurs costs to earn the income but does not charge these costs to HEW grant funds, to required cost-sharing or matching funds, or to other program income. Costs of that kind may be deducted from the gross income in order to determine how much must be treated as program income.

(b) The terms of the grant govern the disposition of income subject to this section. If the terms do not treat this kind of income, there are no HEW requirements governing the disposition. A grantee is not prohibited from imposing requirements of its own on the disposition of this kind of income which is earned by its subgrantees provided those requirements are in addition to and not inconsistent with any requirements imposed by the terms of the grant.

§ 74.45 Program income—royalties or equivalent income earned from patents or from inventions.

Disposition of royalties or equivalent income earned on patents or inventions arising out of activities assisted by a grant or subgrant shall be governed by determinations made or agreements entered into under HEW's patent regulations. (See parts 6 and 8 of this title.) If the determination or agreement does not provide for the disposition of the royalties or equivalent income, the disposition shall be in accordance with the recipient's own policies.

§ 74.46 Program income—income after grant or subgrant support not otherwise treated.

(a) This section applies to program income not treated elsewhere in this part which arises from or is attributable to an activity while supported by a grant or subgrant but which does not accrue until after the period of grant or subgrant support. An example is proceeds from the sale or rental of a residual inventory of merchandise fabricated or purchased by a grant-supported workshop during the period of support.

(b) The terms of the grant govern the disposition of income subject to this section. If the terms do not treat this kind of income, there are no HEW requirements governing the disposition. A grantee is not prohibited from imposing requirements of its own on the disposition of this kind of income which is earned by its subgrantees provided those requirements are in addition to and not inconsistent with any requirements imposed by the terms of the grant.

§ 74.47 Interest earned on advances of grant funds.

(a) Except when exempted by Federal statute (see paragraph (b) of this section for the principal exemption), grantees shall remit to the Federal Government any interest or other investment income earned on advances of HEW grant funds. This includes any interest or investment income earned by subgrantees and cost-type contractors on advances to them that are attributable to advances of HEW grant funds to the grantee. Unless the grantee receives other instructions from the responsible HEW official, the grantee shall remit the amount due by check or money order payable to the Department of Health, Education, and Welfare.

(b) In accordance with the Intergovernmental Cooperation Act of 1968 (Pub. L. 90–577), States, as defined in the act, shall not be accountable to the Federal Government for interest or investment income earned by the State itself, or by its subgrantees, where this income is attributable to grants-in-aid, as defined in the act (42 U.S.C. 4213).[1]

(c) Recipients are cautioned that they are subject to the provisions in § 74.61(e) for minimizing the time between the transfer of advances and their disbursement. Those provisions apply even if there is no accountability to the Federal Government for interest or other investment income earned on the advances.

Subpart G—Cost Sharing or Matching

§ 74.50 Scope of subpart.

(a) This subpart contains rules for satisfying Federal requirements for cost sharing or matching. These rules apply whether the cost sharing or matching is required by Federal statute or by other terms of the grant.

(b) HEW and a grantee may enter into an institutional cost-sharing agreement covering all of HEW's research project

[1] "State" is defined in the act to include any agency or instrumentality of a State, and the definition does not exclude a hospital or institution of higher education which is such an agency or instrumentality. "Grant-in-aid" is defined in the act to exclude "payments under research and development contracts or grants which are awarded directly and on similar terms to all qualifying organizations, whether public or private." (42 U.S.C. 4201)

grants to that grantee in the aggregate. Except as provided by the institutional cost-sharing agreement, this subpart applies to the satisfaction of the grantee's obligation under the agreement, as well as to the satisfaction of cost-sharing or matching requirements that apply only to a single grant.

§ 74.51 Definitions.

For purposes of this subpart:

"Cost sharing or matching" means the value of third-party in-kind contributions and that portion of the costs of a grant-supported project or program not borne by the Federal Government.

"Equipment" has the same meaning given to that term in § 74.132, except that instead of "acquisition cost," the words "market value at the time of donation" shall be substituted.

"Supplies" means all tangible personal property other than "equipment" as defined in this section.

"Third-party in-kind contributions" means property or services which benefit a grant-supported project or program and which are contributed by non-Federal third parties without charge to the grantee, the subgrantee, or a cost-type contractor under the grant or subgrant.

§ 74.52 Basic rule: Costs and contributions acceptable.

With the qualifications and exceptions listed in § 74.53, a cost-sharing or matching requirement may be satisfied by either or both of the following:

(a) Allowable costs incurred by the grantee, the subgrantee, or a cost-type contractor under the grant or subgrant. This includes allowable costs borne by non-Federal grants or by other cash donations from non-Federal third parties.

(b) The value of third-party in-kind contributions applicable to the period to which the cost-sharing or matching requirement applies.

§ 74.53 Qualifications and exceptions.

(a) *Costs borne by other Federal grants.* (1) Except as provided by Federal statute, a cost-sharing or matching requirement may not be met by costs borne by another Federal grant. This prohibition does not apply to costs borne by general program income earned from a contract awarded under another Federal grant.

(2) For the purposes of this part, general revenue sharing funds under 31 U.S.C. 1221 are not considered a Federal grant. Therefore, in the absence of any provision of Federal statute to the contrary, allowable costs borne by these funds may count towards satisfying a cost-sharing or matching requirement.

(b) *Costs or contributions counted towards other Federal cost-sharing requirements.* Neither costs nor the values of third-party in-kind contributions may count towards satisfying a cost-sharing or matching requirement of an HEW grant if they have been or will be counted towards satisfying a cost-sharing or matching requirement of another Federal grant, a Federal procurement contract, or any other award of Federal funds.

(c) *Costs financed by general program income.* Costs financed by general program income, as defined in § 74.42, shall not count towards satisfying a cost-sharing or matching requirement of the HEW grant supporting the activity giving rise to the income unless the terms of the grant expressly permit the income to be used for cost sharing or matching. (This is the alternative for use of general program income described in § 74.42(d).)

(d) *Records.* Costs and third-party in-kind contributions counting towards satisfying a cost-sharing or matching requirement must be verifiable from the records of recipients or cost-type contractors. These records must show how the value placed on third-party in-kind contributions was arrived at. To the extent feasible, volunteer services shall be supported by the same methods that the organization uses to support the allocability of its regular personnel costs.

(e) *Special standards for third-party in-kind contributions.* (1) Third-party in-kind contributions shall count towards satisfying a cost-sharing or matching requirement only where, if the party receiving the contributions were to pay for them, the payments would be allowable costs.

(2) A third-party in kind contribution shall not count as direct cost sharing or matching where, if the party receiving the contribution were to pay for it, the payment would be an indirect cost. Cost-sharing or matching credit for such contributions shall be given only if the recipient or contractor has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of the contributions. (Information on how to establish these rates can be obtained from the Division of Cost Allocation in any HEW regional office's Regional Administrative Support Center.)

(3) The values placed on third-party in-kind contributions for cost-sharing or matching purposes shall conform to the rules in the succeeding sections of this subpart. If a third-party in-kind contribution is of a type not treated in those sections, the value placed upon it shall be fair and reasonable.

§ 74.54 Valuation of donated services.

(a) *Volunteer services.* Unpaid services provided to a recipient by individuals shall be valued at rates consistent with those ordinarily paid for similar work in the recipient's organization. If the recipient does not have employees performing similar work, the rates shall be consistent with those ordinarily paid by other employers for similar work in the same labor market. In either case, a reasonable amount for fringe benefits may be included in the valuation.

(b) *Employees of other organizations.* When an employer other than a recipient or cost-type contractor furnishes free of charge the services of an employee in the employee's normal line of work, the services shall be valued at the employee's regular rate of pay exclusive of the employer's fringe benefits and overhead costs. If the services are in a different line of work, paragraph (a) of this section shall apply.

§ 74.55 Valuation of donated supplies and loaned equipment or space.

(a) If a third party donates supplies, the contribution shall be valued at the market value of the supplies at the time of donation.

(b) If a third party donates the use of equipment or space in a building but retains title, the contribution shall be valued at the fair rental rate of the equipment or space.

§ 74.56 Valuation of donated equipment, buildings, and land.

If a third party donates equipment, buildings, or land, and title passes to a recipient, the treatment of the donated property shall depend upon the purpose of the grant or subgrant, as follows:

(a) *Awards for capital expenditures.* If the purpose of the grant or subgrant is to assist the recipient in the acquisition of property, the market value of that property at the time of donation may be counted as cost sharing or matching.

(b) *Other awards.* If assisting in the acquisition of property is not the purpose of the grant or subgrant, the following rules apply:

(1) If approval is obtained from the awarding party, the market value at the time of donation of the donated equipment or buildings and the fair rental rate of the donated land may be counted as cost sharing or matching. In the case of a subgrant, the terms of the HEW grant may require that the approval be obtained from the granting agency as well as the grantee. In all

cases, the approval may be given only if a purchase of the equipment or buildings or a purchase or rental of the land would be approved as an allowable direct cost.

(2) If approval is not obtained under paragraph (b)(1) of this section, no amount may be counted for donated land, and only depreciation or use allowances may be counted for donated equipment and buildings. The depreciation or use allowances for this property are not treated as third-party in-kind contributions. Instead, they are treated as costs incurred by the recipient. They are computed and allocated (usually as indirect costs) in accordance with the cost principles specified in subpart Q of this part, in the same way as depreciation or use allowances for purchased equipment and buildings. The amount of depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.

§ 74.57 Appraisal of real property.

In some cases under §§ 74.55 and 74.56, it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in a building. In these cases, the granting agency may require that the market value or fair rental rate be established by a certified real property appraiser (or by a representative of the U.S. General Services Administration, if available) and that the value or rate be certified by a responsible official of the party to which the property or its use is donated. For subgrants, this requirement may also be imposed by the grantee.

Subpart H—Standards for Grantee and Subgrantee Financial Management Systems

§ 74.60 Scope of subpart.

This subpart prescribes standards for financial management systems of grant- and subgrant-supported activities. Awarding parties shall not impose additional standards on recipients unless specifically provided for in a Federal statute (e.g. the Joint Funding Simplification Act, Pub. L. 93–510) or these regulations. However, suggestions and assistance may be provided in establishing or improving financial management systems when needed or requested.

§ 74.61 Standards.

Grantees and subgrantees shall meet the following standards for their grant and subgrant financial management systems.

(a) *Financial reporting.* Accurate, current, and complete disclosure of the financial results of each project or program shall be made in accordance with the financial reporting requirements of the grant or subgrant. The terms of grants and subgrants shall not require financial reporting on the accrual basis if the recipient's accounting system is maintained on the cash basis. When accrual reporting is statutorily required, a recipient whose accounting system is not maintained on that basis shall not be required to convert it to the accrual basis; the recipient may develop the accrual information through an analysis of the documentation on hand.

(b) *Accounting records.* Records which identify adequately the source and application of funds for grant- or subgrant-supported activities shall be maintained. These records shall contain information pertaining to grant or subgrant awards, authorizations, obligations, unobligated balances, assets, outlays, income, and, if the recipient is a government, liabilities.

(c) *Internal control.* Effective control and accountability shall be maintained for all grant or subgrant cash, real and personal property covered by subpart O of this part, and other assets. Recipients shall adequately safeguard all such property and shall assure that it is used solely for authorized purposes.

(d) *Budgetary control.* The actual and budgeted amounts for each grant or subgrant shall be compared. If appropriate or specifically required, recipients shall relate financial information to performance or productivity data, including the production of unit cost information. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

(e) *Advance payments.* Procedures shall be established to minimize the time elapsing between the advance of Federal grant or subgrant funds and their disbursement by the recipient. When advances are made by a letter-of-credit method, the recipient shall make drawdowns as close as possible to the time of making disbursements. Grantees advancing cash to subgrantees shall conform sustantially to the same standards of timing and amount as apply to advances by Federal agencies to grantees, including requirements for timely reporting of cash disbursements and balances. (See subpart K of this part.)

(f) *Allowable costs.* Procedures shall be established for determining the reasonableness, allowability, and allocability of costs in accordance with the applicable cost principles prescribed by subpart Q of this part and the terms of the grant.

(g) *Source documentation.* Accounting records shall be supported by source documentation such as cancelled checks, paid bills, payrolls, contract and subgrant award documents, etc.

(h) *Audits*—(1) *General.* External or internal audits shall be made in accordance with generally accepted auditing standards, including the standards of the U.S. General Accounting Office's publication "Standards for Audit of Governmental Organizations Programs, Activities, and Functions."[1] The auditors engaged by the recipient shall meet the criteria for qualifications and independence in that publication.

(2) *Purpose and scope.* The purpose of these audits shall be to determine the effectiveness of the financial management systems and internal procedures established by the recipient to meet the terms of its grants and subgrants. The recipient's auditors need not examine every grant or subgrant awarded to the recipient. Rather, audits generally should be made on an organization-wide basis to test the fiscal integrity of financial transactions and compliance with the terms of awards. These tests would include an appropriate sampling of Federal grants and subgrants.

(3) *Frequency.* These audits shall be conducted on a continuing basis or at scheduled intervals, usually once a year, but at least every two years. The frequency shall depend on the nature, size and complexity of the recipient's grant- or subgrant-supported activities.

(4) *Relation to Federal audit.* These audits may affect the frequency and scope of Federal audit. However, nothing in this section is intended to limit the right of the Federal Government to conduct an audit of a grant- or subgrant-supported activity.

(5) *Audit resolution.* The recipient shall follow a systematic method to assure timely and appropriate resolution of audit findings and recommendations.

(6) *Copies of audit reports.* A copy of each audit report, and a description of its resolution, shall be furnished to the appropriate regional office of the HEW Audit Agency.

Subpart I—Financial Reporting Requirements

§ 74.70 Scope and applicability of subpart.

(a) This subpart prescribes requirements and forms for grantees to report financial information to HEW,

[1] Available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

and to request grant payments when a letter of credit is not used.

(b) This subpart need not be applied by grantees in dealing with their subgrantees. However, grantees are encouraged not to impose on subgrantees more burdensome requirements than HEW imposes on grantees.

§ 74.71 Definitions.

As used in this subpart or in the forms identified by this subpart:

"Accrued expenditures" are the charges by grantee during a given period requiring the provision of funds for: (a) Goods and other tangible property received; (b) services performed by employees, contractors, subgrantees, and other payees; and (c) amounts "becoming owed" for which no current services or performance is required, such as annuities, insurance claims, and other benefit payments.

"Accrued income" is the sum of (a) earnings during a given period from services performed by the grantee and from goods and other tangible property delivered to purchasers, and (b) amounts becoming owed to the grantee for which no current services or performance is required by the grantee.

"Federal funds authorized" means the total amount of Federal funds obligated by the Federal Government and authorized for use by the grantee.

"In-kind contributions" means "third-party in-kind contributions" as defined in subpart G of this part.

"Obligations" are the amounts of orders placed, contracts and subgrants awarded, services received, and similar transactions during a given period, which will require payment during the same or a future period.

"Outlays" are charges made to the grant project or program. Outlays may be reported on a cash or accrual basis.

"Program income" has the same meaning it has in subpart F of this part.

"Unobligated balance" is the portion of the Federal funds authorized which has not been obligated by the grantee and is determined by deducting the grantee's cumulative obligations from the cumulative Federal funds authorized.

"Unliquidated obligations," for reports prepared on a cash basis, are the amount of obligations incurred by the grantee that has not been paid. For reports prepared on an accrued expenditure basis, they are the amount of obligations incurred by the grantee for which an outlay has not been recorded.

§ 74.72 General.

(a) Except as provided in paragraphs (d) and (e) of this section, grantees shall use only the forms specified in §§ 74.73 through 74.76, and such supplementary or other forms as may from time to time be authorized by OGP, for:

(1) Submitting grant financial reports to granting agencies, or

(2) Requesting advances or reimbursements when letters of credit are not used.

(b) Grantees shall follow all applicable standard instructions issued by OMB for use in connection with the forms specified in §§ 74.73 through 74.76. Granting agencies may issue substantive supplementary instructions only with the approval of OGP. Granting agencies may shade out or instruct the grantee to disregard any line item that the granting agency finds unnecessary for its decision making purposes.

(c) Grantees will not be required to submit more than the original and two copies of forms required under this subpart.

(d) Granting agencies may provide computer outputs to grantees to expedite or contribute to the accuracy of reporting. Granting agencies may accept the required information from grantees in machine usable format or computer printouts instead of prescribed formats.

(e) When a granting agency has determined that a grantee's accounting system does not meet the standards for financial management systems contained in subpart H of this part, it may require financial reports with more frequency or more detail (or both), upon written notice to the grantee (without regard to § 74.7), until such time as the standards are met.

(f) HEW may waive any report required by this subpart if not needed.

(g) Granting agencies may extend the due date for any financial report upon receiving a justified request from the grantee.

§ 74.73 Financial Status Report.

(a) *Form.* Grantees shall use Standard Form 269, Financial Status Report, to report the Status of funds for all nonconstruction grants.

(b) *Accounting basis.* Each grantee shall report program outlays and program income on the same accounting basis, i.e., cash or accrued expenditure (accrual), which it uses in its accounting system.

(c) *Frequency.* The granting agency may prescribe the frequency of the report for each project or program. However, the report shall not be required more frequently than quarterly except as provided in §§ 74.7 and 74.72(e). If the granting agency does not specify the frequency of the report, it shall be submitted annually. A final report shall be required upon expiration or termination of grant support.

(d) *Due date.* When reports are required on a quarterly or semiannual basis, they shall be due 30 days after the reporting period. When required on an annual basis, they shall be due 90 days after the grant year. Final reports shall be due 90 days after the expiration or termination of grant support.

§ 74.74 Federal Cash Transactions Report.

(a) *Form.* (1) For grants paid by letters of credit (or Treasury check advances) through any HEW payment office except the Departmental Federal Assistance Financing System (DFAFS), the grantee shall submit to the payment office Standard Form 272, Federal Cash Transactions Report, and when necessary, its continuation sheet, Standard Form 272a. For grants paid by DFAFS, the grantee shall submit DFAFS Report 27, Recipient Report of Expenditures, to DFAFS.

(2) These reports will be used by the HEW payment office to monitor cash advanced to grantees and to obtain disbursement or outlay information for each grant from grantees. The format of the report may be adapted as appropriate when reporting is to be accomplished with the assistance of automatic data processing equipment: *Provided,* That the information to be submitted is not changed in substance.

(b) *Forecasts of Federal cash requirements.* Forecasts of Federal cash requirements may be required in the "Remarks" section of the report.

(c) *Cash in hands of secondary recipients.* When considered necessary and feasible by the responsible HEW payment office, grantees may be required to report the amount of cash subadvances in excess of three days' needs in the hands of their subgrantees or contractors and to provide short narrative explanations of actions taken by the grantee to reduce the excess balances.

(d) *Frequency and due date.* Grantees shall submit the report no later than 15 working days following the end of each quarter. However, where a letter of credit authorizes advances at an annualized rate of one million dollars or more, the HEW payment office may require the report to be submitted within 15 working days following the end of each month.

§ 74.75 Request for Advance or Reimbursement.

(a)(1) *Advance payments.* Requests for Treasury check advance payments shall be submitted on Standard Form

270, Request for Advance or Reimbursement. (This form is not used for drawdowns under a letter of credit or when Treasury check advance payments are made to the grantee automatically on a predetermined basis.)

(2) *Reimbursements.* Requests for reimbursement under non-construction grants shall also be submitted on Standard Form 270. (For reimbursement requests under construction grants, see § 74.76(a).)

(b) The frequency for submitting payment requests is treated in § 74.96.

§ 74.76 Outlay report and request for reimbursement for construction programs.

(a) *Construction grants paid by reimbursement method.* (1) Requests for reimbursement under construction grants shall be submitted on Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. Granting agencies may, however, prescribe the Request for Advance or Reimbursement form specified in § 74.75 instead of this form.

(2) The frequency for submitting reimbursement requests is treated in § 74.96.

(b) *Construction grants paid by letter of credit or Treasury check advance.* (1) When a construction grant is paid by letter of credit or Treasury check advances, the grantee shall report its outlays to the granting agency using Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. The granting agency will provide any necessary special instruction. However, frequency and due date shall be governed by § 74.73(c) and (d).

(2) When a construction grant is paid by Treasury check advances based on periodic requests from the grantee, the advances shall be requested on the form specified in § 74.75.

(3) The granting agency may substitute the Financial Status Report specified in § 74.73 for the Outlay Report and Request for Reimbursement.

(c) *Accounting basis.* The accounting basis for the Outlay Report and Request for Reimbursement for Construction Programs shall be governed by § 74.73(b).

Subpart J—Monitoring and Reporting of Program Performance

§ 74.80 Scope of subpart.

This subpart sets forth the procedures for monitoring and reporting program performance of recipients. These procedures are designed to place reliance on recipients to manage the day-to-day operations of their grant- and subgrant-supported activities.

§ 74.81 Monitoring by recipients.

Recipients shall monitor the performance of grant- and subgrant-supported activities. They shall review each program, function, or activity to assure that adequate progress is being made towards achieving the goals of the grant or subgrant.

§ 74.82 Performance reports under nonconstruction grants.

(a) Where the granting agency determines that performance information sufficient to meet its programmatic needs will be available from subsequent applications, the granting agency will require the grantee to submit a performance report only upon expiration or termination of grant support. This report will be due on the same date as the final financial Status Report unless waived by the granting agency. Note that the "Application for Federal Assistance (Nonconstruction Programs)" prescribed by subpart N of this part, when used to request continued support, provides information substantially equivalent to a performance report.

(b) Except as provided in paragraph (a) of this section, grantees shall submit annual performance reports unless the granting agency requires quarterly or semiannual reports. Annual reports shall be due 90 days after the grant year; quarterly or semiannual reports shall be due 30 days after the reporting period. A final performance report shall be due 90 days after the expiration or termination of grant support. Granting agencies may extend the due date for any performance report upon receiving a justified request from the grantee. In addition, granting agencies may waive the requirement for any performance report which is not needed.

(c) The content of performance reports shall conform to any instructions issued by the granting agency, including, to the extent appropriate to the particular grant, a brief presentation of the following for each program, function, or activity involved:

(1) A comparison of actual accomplishments to the goals established for the period. Where the output of the project or program can be readily expressed in numbers, a computation of the cost per unit of output may be required if that information will be useful.

(2) The reasons for slippage if established goals were not met.

(3) Other pertinent information including, when appropriate, analysis and explanation of unexpectedly high overall or unit costs.

(d) Grantees will not be required to submit more than the original and two copies of performance reports.

(e) Grantees shall adhere to the standards in paragraphs (a) through (d) of this section in prescribing performance reporting requirements for subgrantees.

§ 74.83 Performance reports under construction grants.

In general, awarding parties rely heavily on on-site technical inspection and certified percentage-of-completion data to keep themselves informed as to progress under construction grants and subgrants. Formal performance reports to supplement those sources of information shall be required only if considered necessary by the awarding party, and in no case more frequently than quarterly.

§ 74.84 Significant developments between scheduled reporting dates.

Between the scheduled performance reporting dates, events may occur which have significant impact upon the grant- or subgrant-supported activity. In such cases, the recipient shall inform the awarding party as soon as the following types of conditions become known:

(a) Problems, delays, or adverse conditions which will materially impair the ability to attain the objective of the award. This disclosure shall be accompanied by a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(b) Favorable developments which enable meeting time schedules and goals sooner or at less cost than anticipated or producing more beneficial results than originally projected.

§ 74.85 Site visits.

Site visits may be made as necessary by representatives of HEW to:

(a) Review program accomplishments and management control systems.

(b) Provide such technical assistance as may be required.

Subpart K—Grant and Subgrant Payment Requirements

§ 74.90 Scope of subpart.

This subpart prescribes the basic standard and the methods under which HEW will make grant payments to grantees, and grantees will make subgrant payments to their subgrantees.

§ 74.91 Definitions.

As used in this subpart:

"Advance by Treasury check" is a payment made by a Treasury check to a

grantee, upon its periodic request or through the use of predetermined payment schedules, before payments are made by the grantee.

"Letter of credit" is an instrument certified by an authorized official which authorizes a recipient to draw funds needed for immediate disbursement in accordance with Treasury Circular No. 1075.

"Percentage of completion method" refers to a system under which payments are made for construction work according to the percentage of completion of the work, rather than to the grantee's rate of disbursements.

§ 74.92 Basic standard.

Methods and procedures for making payments to recipients shall minimize the time elapsing between the transfer of funds and the recipient's disbursements.

§ 74.93 Payment methods under nonconstruction grants.

(a) Letters of credit will be used to pay HEW grantees when all of the following conditions exist:

(1) There is or will be a continuing relationship between the grantee and the HEW payment office for at least a year and the total amount of advances to be received from the HEW payment office is $120,000 or more per year,

(2) The grantee has maintained, or demonstrated to HEW the willingness and ability to maintain, procedures that minimize the time elapsing between the transfer of funds from the Treasury and their disbursement by the grantee, and

(3) The grantee's financial management system meets the standards for fund control and accountability in Subpart H of this part.

(b) Advances by Treasury check will be used, in accordance with Treasury Circular No. 1075, when the grantee does not meet the requirements in paragraph (a)(1) of this section but does meet the requirements in paragraphs (a)(2) and (3) of this section.

(c) Reimbursement by Treasury check will be preferred method when the requirements of either paragraph (a)(2) or paragraph (a)(3) of this section are not met. This method may also be used when the major portion of the program is accomplished through private market financing or Federal loans, and the Federal grant assistance constitutes a minor portion of the program.

§ 74.94 Payment methods under construction grants.

(a) Reimbursement by Treasury check shall be the preferred method when the grantee does not meet the requirements specified in § 74.93(a) (2) or (3), and may be used for any HEW construction grant unless HEW has entered into an agreement with the grantee to use a letter of credit for all HEW grants, including construction grants.

(b) When the reimbursement by Treasury check method is not used, § 74.93 (a) and (b) shall apply to the construction grant. Implementing procedures under § 74.93 (a) and (b) will be insofar as possible the same for construction grants as for nonconstruction grants awarded to the same grantee.

(c) HEW will not use the percentage of completion method to pay its construction grants. The grantee may use that method to pay its construction contractor, but if it does, HEW's payments to the grantee will nevertheless be based on the grantee's actual rate of disbursements.

§ 74.95 Withholding of payments.

(a) Unless otherwise required by Federal statute, payments for proper charges incurred by grantees will not be withheld unless (1) the grantee has failed to comply with Federal reporting requirements or (2) the grant is suspended pursuant to § 74.114 or (3) the grantee owes money to the United States and collection of the debt by withholding grant payments will not impair the accomplishment of the objectives of any grant program sponsored by the United States.

(b) Cash withheld for failure to comply with reporting requirements but without suspension of the grant will be released to the grantee upon subsequent compliance. When a grant is suspended, payment adjustments will be made in accordance with § 74.114. When a debt is to be collected, HEW may withhold payments or require appropriate accounting adjustments to recorded grant cash balances for which the grantee is accountable to the Federal Government, in order to liquidate the indebtedness.

§ 74.96 Requesting advances or reimbursements.

(a) If advances are made by Treasury check and the advances are not prescheduled, the grantee shall submit its requests for payment monthly. Less frequent requests are not permitted because they would result in advances covering excessive periods of time.

(b) If payments are made through reimbursement by Treasury check, the grantee may submit its requests for reimbursement monthly and may submit them more often if authorized. The grantee will be paid as promptly as possible, ordinarily within 30 days after receipt of a proper request for reimbursement.

(c) The forms for requesting advances or reimbursements are identified in subpart I of this part.

§ 74.97 Payments to subgrantees.

Grantees shall observe the requirements of this subpart in making (or withholding) payments to subgrantees, with the following exceptions:

(a) Advance payment by check may be used instead of letter of credit;

(b) The forms specified in subpart I of this part for requesting advances and reimbursements are not required to be used by subgrantees; and

(c) The reimbursement by check method may be used to pay any construction subgrant, whether or not HEW has agreed to use a letter of credit for all direct HEW grants to that same recipient.

Subpart L—Programmatic Changes and Budget Revisions

§ 74.100 Scope and applicability of this subpart.

(a) *Scope.* This subpart deals with prior approval requirements for post-award programmatic changes and budget revisions by recipients.

(b) *Exemption of mandatory grants.* Sections 74.103 through 74.106 do not apply to programmatic changes or budget revisions made by grantees under State plan or other grants which the granting agency is required by law to award if the applicant meets all applicable requirements for entitlement. (These are generally called "mandatory" or "formula" grants.)

(c) *Exemption of certain subgrants.* Sections 74.103 through 74.106 do not apply to subgrants from States to their local governments under a mandatory or formula grant, if the local government is not required to apply for the subgrant on a project basis. Generally, such exempt subgrants will occur under a State plan which provides for local administration of a State-wide program under State supervision.

§ 74.101 Relationship to cost principles.

The cost principles in Appendices C, D, E, and F to this part contain requirements for prior approval of certain types of costs (see § 74.176). Except when waived, those requirements apply to all grants and subgrants even if §§ 74.103 through 74.106 do not.

§ 74.102 Prior approval procedures.

(a) *For grants.* When requesting a prior approval required by this subpart, grantees shall address their requests to

the responsible grants officer of the granting agency. Approvals shall not be valid unless they are in writing and signed by either the grants officer, the head of the granting agency, or the head of the granting agency's regional office.

(b) *For subgrants.* Grantees shall be responsible for reviewing requests from their subgrantees for the approvals required by this subpart and for giving or denying the approval. A grantee shall not approve any action which is inconsistent with the purpose or terms of the Federal grant. If an action by a subgrantee will result in a change in the overall grant project or budget requiring granting agency approval, the grantee shall obtain that approval before giving its approval to the subgrantee. Approvals shall not be valid unless they are in writing and signed by an authorized official of the grantee.

(c) *Timing.* Within 30 days from the date of receipt of a request for approval, the approval authority shall review the request and notify the recipient of its decision. If the request for approval is still under consideration at the end of 30 days, the approval authority shall inform the recipient in writing as to when to expect the decision.

§ 74.103 Programmatic changes.

(a) *Scope.* This section contains requirements for prior approval of departures, other than budget revisions, from approved project plans. In addition to the requirements in this section, awarding parties may require prior approval for other kinds of programmatic changes to an approved grant or subgrant project.

(b) *Changes to project scope or objectives.* The recipient shall obtain prior approval for any change to the scope or objectives of the approved project. (For construction projects, any material change in approved space utilization or functional layout shall be considered a change in scope.)

(c) *Changes in key people.* The recipient of a grant or subgrant for research (or any other kind of grant or subgrant if the terms of the award make this rule applicable) shall obtain prior approval:

(1) To continue the project during any continuous period of more than 3 months without the active direction of an approved project director or principal investigator; or

(2) To replace the project director or principal investigator (or any other persons named and expressly identified as key project people in the notice of grant or subgrant award) or to permit any such people to devote substantially less effort to the project than was anticipated when the grant or subgrant was awarded.

(d) *Other programmatic changes.* The following shall require prior approval except to the extent explicitly included in the project plan as approved by the awarding party at the time of award:

(1) Providing financial assistance to a third party by subgranting or any other means.

(2) Tranferring to a third party, by contracting or any other means, the actual performance of the substantive programmatic work. The term "substantive programmatic work" means activities which are central to carrying out the purpose of the project, and not merely incidental. Transfer of substantive programmatic work does not include purchase of supplies, materials, or equipment; acquisition of general or incidental support services; obtaining advice; or transfer of activities whose cost is treated as an indirect cost.

(3) Providing medical care to individuals under research grants.

§ 74.104 Budgets generally.

(a) *Definitions.* In this subpart:

(1) "Budget" means the recipient's financial plan for carrying out the project or program.

(2) "Approved budget" means a budget (including any revised budget) which has been approved by the awarding party.

(b) *Research project budgets.* For research projects, approved budgets shall not include the recipient's share of project costs.

(c) *Non-research project budgets.* For non-research projects which involve cost sharing or matching, approved budgets shall ordinarily consist of a single set of figures covering total project cost (the sum of the awarding party's share and the recipient's share). However, the awarding party may specify that the recipient's share not be included in the approved budget. In no case, however, shall the approved budget be in the form of a separate set of figures for each share.

(d) *Subdivision by programmatic segments.* Some grants and subgrants encompass two or more programmatic segments (such as discrete programs, projects, functions, or types of activities). In these cases, the awarding party may require that the approved budget be subdivided to show the anticipated cost of each programmatic segment.

§ 74.105 Budget revisions—nonconstruction projects.

(a) Except as provided in paragraph (b) of this section, the recipient of a grant or subgrant having an approved budget shall obtain prior approval for any budget revision which will:

(1) Involve transfer of amounts budgeted for indirect costs to absorb increases in direct costs, or

(2) Involve transfer of amounts previously budgeted for student support (tuition waivers, stipends, and other payments to or for trainees), or

(3) Result in a need for the award of additional funds, e.g., an increase in the base upon which indirect costs are calculated which will increase allocable indirect costs and result in a claim for a supplementary award.

(b) Any or all of the prior approval requirements in paragraph (a) of this section may be waived by the awarding party.

(c) Except as provided in §§ 74.107 and 74.176, other budget changes under nonconstruction grants do not require approval.

§ 74.106 Budget revisions—construction projects.

Unless provided otherwise by the terms of the grant or subgrant, revisions to construction project budgets do not require approval.

§ 74.107 Construction and nonconstruction work under the same grant or subgrant.

When a grant or subgrant provides support for both construction and nonconstruction work, the awarding party may require prior approval before any fund or budget transfers between the two types of work.

§ 74.108 Authorized funds exceeding needs.

The recipient shall notify the awarding party promptly whenever the amount of grant or subgrant authorized funds is expected to exceed needs by more than $5,000 or 5 percent of the grant or subgrant, whichever is greater. This notification will not be required under continuing grants or subgrants if the application for the next period's funding will include an estimate of what the unobligated balance of authorized funds will be at the end of the current period.

Subpart M—Grant and Subgrant Closeout, Suspension, and Termination

§ 74.110 Definitions.

"Grant closeout" means the process by which a granting agency determines that all applicable administrative actions and all required work of the grant have been completed by the grantee and the granting agency.

"Suspension" of a grant means temporary withdrawal of the grantee's

authority to obligate grant funds pending corrective action by the grantee or a decision to terminate the grant.

"Termination" of a grant means permanent withdrawal of the grantee's authority to obligate previously awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee. "Termination" does not include:

(a) Withdrawal of funds awarded on the basis of the grantee's underestimate of the unobligated balance in a prior period;

(b) Refusal by the granting agency to extend a grant or award additional funds (such as refusal to make a competing or noncompeting continuation, renewal, extension, or supplemental award);

(c) Withdrawal of the unobligated balance as of the expiration of a grant;

(d) Annulment, i.e., voiding, of a grant upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

§ 74.111 Closeout.

(a) Each grant shall be closed out as promptly as is feasible after expiration or termination.

(b) In closing out HEW grants, the following shall be observed:

(1) Upon request, HEW shall promptly pay the grantee for any allowable reimbursable costs not covered by previous payments.

(2) The grantee shall immediately refund or otherwise dispose of, in accordance with instructions from HEW, any unobligated balance of cash advanced to the grantee.

(3) The grantee shall submit, within 90 days of the date of expiration or termination, all financial, performance, and other reports required by the terms of the grant. HEW may extend the due date for any report upon receiving a justified request from the grantee, and may waive any report which is not needed.

(4) The granting agency shall make a settlement for any upward or downward adjustment of the Federal share of costs, to the extent called for by the terms of the grant.

(c)(1) The closeout of a grant does not affect the retention period for, or Federal rights of access to, grant records. See subpart D of this part.

(2) If a grant is closed out without audit, the granting agency retains the right to disallow and recover an appropriate amount after fully considering any recommended disallowances resulting from an audit which may be conducted later.

(3) The closeout of a grant does not affect the grantee's responsibilities with respect to property under subpart O of this part, or with respect to any program income for which the grantee is still accountable under subpart F of this part.

§ 74.112 Amounts payable to the Federal Government.

For each grant, the following sums shall constitute a debt or debts owed by the grantee to the Federal Government, and shall, if not paid upon demand, be recovered from the grantee or its successor or assignees by set-off or other action as provided by law:

(a) Any grant funds paid to the grantee by the Federal Government in excess of the amount to which the grantee is finally determined to be entitled under the terms of the grant;

(b) Any interest or other investment income earned on advances of grant funds which is due the Federal Government pursuant to § 74.47;

(c) Any royalties or other special classes of program income which, under the terms of the grant, are required to be remitted to the Federal Government (see subpart F of this part);

(d) Any amounts due the Federal Government under subpart O of this part; and

(e) Any other amounts finally determined to be due the Federal Government under the terms of the grant.

§ 74.113 Violation of terms.

(a) When a grantee has materially failed to comply with the terms of a grant, the granting agency may suspend the grant, in accordance with § 74.114, terminate the grant for cause, as provided in § 74.115, or take such other remedies as may be legally available and appropriate in the circumstances.

(b) If a project or program is supported over two or more funding periods, a grant may be suspended or terminated in the current period for failure to submit a report still due from a prior period.

§ 74.114 Suspension.

(a) When a grantee has materially failed to comply with the terms of a grant, the granting agency may, upon reasonable notice to the grantee, suspend the grant in whole or in part. The notice of suspension will state the reasons for the suspension, any corrective action required of the grantee, and the effective date. The suspension may be made effective at once if a delayed effective date would be unreasonable considering the granting agency's responsibilities to protect the Federal Government's interest. Suspensions shall remain in effect until the grantee has taken corrective action satisfactory to the granting agency, or given evidence satisfactory to the granting agency that such corrective action will be taken, or until the granting agency terminates the grant.

(b) New obligations incurred by the grantee during the suspension period will not be allowed unless the granting agency expressly authorizes them in the notice of suspension or an amendment to it. Necessary and otherwise allowable costs which the grantee could not reasonably avoid during the suspension period will be allowed if they result from obligations properly incurred by the grantee before the effective date of the suspension and not in anticipation of suspension or termination. At the discretion of the granting agency, third-party in-kind contributions applicable to the suspension period may be allowed in satisfaction of cost sharing or matching requirements.

(c) Appropriate adjustments to payments under the suspended grant will be made either by withholding subsequent payments or by not allowing the grantee credit for disbursements made in payment of unauthorized obligations incurred during the suspension period.

§ 74.115 Termination.

(a) *Termination for cause.* The granting agency may terminate any grant in whole, or in part, at any time before the date of expiration, whenever it determines that the grantee has materially failed to comply with the terms of the grant. The granting agency shall promptly notify the grantee in writing of the determination and the reasons for the termination, together with the effective date.

(b) *Termination on other grounds.* Except as provided in paragraph (a) of this section, grants may be terminated in whole or in part only as follows:

(1) By the granting agency with the consent of the grantee, in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial terminations, the portion to be terminated, or

(2) By the grantee, upon written notification to the granting agency, setting forth the reasons for such termination, the effective date, and in the case of partial terminations, the portion to be terminated. However, if, in the case of a partial termination, the granting agency determines that the remaining portion of the grant will not accomplish the purposes for which the grant was made, the granting agency

may terminate the grant in its entirety under either paragraph (a) or paragraph (b)(1) of this section.

(c) *Termination settlements.* When a grant is terminated, the grantee shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The granting agency shall allow full credit to the grantee for the Federal share of the noncancellable obligations properly incurred by the grantee prior to termination.

§ 74.116 Applicability to subgrants.

Grantees shall adhere to the same standards regarding closeout, suspension, and termination of subgrants as are prescribed in this subpart for granting agencies.

Subpart N—Forms for Applying for Grants

§ 74.120 Scope of subpart.

(a) This subpart prescribes forms and instructions to be used by governmental organizations (except hospitals and institutions of higher education operated by a government) in applying to HEW for grants. This subpart is not applicable, however, to mandatory or formula grant programs which do not require applicants to apply to HEW for funds on a project basis.

(b) This subpart permits granting agencies to prescribe the form of applications by nongovernmental organizations (including hospitals and institutions of higher education operated by a government), but prescribes the use of a standard facesheet for certain of these applications.

(c) This subpart applies only to applications for grants, and is not required to be applied by grantees in dealing with applicants for subgrants. However, grantees are encouraged not to adopt more detailed or burdensome application requirements for subgrants.

§ 74.121 Authorized forms and instructions for governmental organizations.

(a) In applying to HEW for grants, governments shall use only the forms specified in §§ 74.122 through 74.126, and such supplementary or other forms as may from time to time be prescribed by the granting agency with the approval of OGP.

(b) Governments will not be required to submit more than the original and two copies of their applications.

(c) Governments shall follow all applicable standard instructions promulgated by OMB for use in connection with the forms specified in §§ 74.122 through 74.126. Granting agencies may specify and describe the programs, functions, or activities that will be used to plan, budget, and evaluate the work under a grant. Other supplementary instructions may be issued only with the approval of OGP. For any form, the granting agency may shade out or instruct the applicant to disregard any line item that is not needed.

(d) When a government applies for additional funding (such as a continuation or supplemental award) or amends a previously submitted application, only the facesheet and any other affected pages need be submitted. Previously submitted pages whose information is still current need not be resubmitted.

§ 74.122 Preapplications for Federal Assistance for governmental organizations.

(a) When a preapplication is submitted by a government, the preapplication for Federal assistance form prescribed by OMB Circular A–102 shall be used. The purposes of preapplications shall be to:

(1) Establish communication between the applicant and the granting agency;

(2) Determine the applicant's eligibility;

(3) Determine how well the project can compete with similar applications from others in order to discourage proposals which have little or no chance for Federal funding before applicants incur significant expenditures for preparing an application.

(b) Preapplication shall be mandatory when the potential applicant is a government and the proposed project (1) is for construction, land acquisition, or land development, and (2) would require more than $100,000 of Federal funding. The granting agency may require preapplications regardless of the type of project and regardless of the estimated amount of Federal funding. In addition, any government may submit a preapplication even when not required by the granting agency.

§ 74.123 Notice of preapplication review action for governmental organizations.

The notice of preapplication review action form prescribed by attachment M of OMB Circular No. A–102 will be used by granting agencies to inform governmental applicants of the results of the review of the preapplications submitted to them. The granting agency will send a notice to the applicant ordinarily within 45 days of the receipt of the preapplication form. If the review cannot be made within 45 days, the applicant will be informed by letter as to when the review will be completed.

§ 74.124 Application for Federal assistance (nonconstruction programs) for governmental organizations.

The applicant for Federal assistance (nonconstruction programs) form prescribed by attachment M of OMB Circular No. A–102 shall be used by governments in applying for any grant to which this subpart is applicable except where a form specified in § 74.125 or § 74.126 is to be used.

§ 74.125 Application for Federal assistance (for construction programs) for governmental organizations.

The applicant for Federal assistance (for construction programs) form prescribed by attachment M of OMB Circular No. A–102 shall be used by governments in applying for any grant whose purpose is soley or primarily construction, land acquisition, or land development.

§ 74.126 Application for Federal assistance (short form) for governmental organizations.

The applicant for Federal assistance (short form) form prescribed by attachment M of OMB Circular No. A–102 shall be used by governments in applying for any single-purpose one-time grant of less than $10,000 not requiring clearinghouse review, an environmental impact statement, or the relocation of persons, businesses, or farms. Granting agencies may, at their discretion, authorize or prescribe this form for applications for larger amounts.

§ 74.127 Authorized forms and instructions for nongovernmental organizations.

Nongovernmental organizations shall use application forms and instructions prescribed by the granting agency, except that the facesheet of such applications shall be standard form 424 for grants under programs covered by attachment A. part I, of OMB Circular No. A–95.

Subpart O—Property

General

§ 74.130 Scope and applicability of this subpart.

(a) Except as explained in paragraphs (c), (d), and (e) of this section this subpart applies to real property, equipment, and supplies acquired with grant support. To be considered acquired with grant support, some or all of the property's acquisition cost must be a direct cost under the grant, a subgrant, or a cost-type contract and must be either borne by grant funds or counted toward satisfying a grant cost-sharing or matching requirement.

(b) This subpart also deals with inventions, patents, and copyrights arising out of activities assisted by a grant or subgrant.

(c) This subpart does not apply to—

(1) Property for which only depreciation or use allowances are charged;

(2) Property donated entirely as a third-party in-kind contribution (as defined in § 74.51); or

(3) Equipment or supplies acquired primarily for sale or rental rather than for use.

(d) Equipment or supplies acquired by a contractor under a grant or subgrant shall be subject to this subpart only if, by terms of the contract, title vests in the grantee or subgrantee.

(e) For research grants that are subject to an institutional cost-sharing agreement (see § 74.50(b)), real property, equipment, and supplies shall be subject to this subpart only if at least some part of the acquisition cost is borne as a direct cost by Federal grant funds.

§ 74.131 Prohibition against additional requirements.

Recipients may follow their own property management policies and procedures: *Provided,* They observe the requirements of this subpart. Awarding parties may not impose on recipients property requirements (including property reporting requirements) not authorize by this subpart, unless specifically required by Federal statutes or Executive Orders.

§ 74.132 Definitions.

As used in this subpart:

"Acquisition" of property includes purchase, construction, or fabrication of property, but does not include rental of property or alterations and renovations of real property.

"Acquisition cost" of an item of purchased equipment means the net invoice price of the equipment, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the equipment usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance shall be included in or excluded from the unit acquisition cost in accordance with the regular accounting practices of the organization purchasing the equipment. If the item is acquired by trading in another item and paying an additional amount, "acquisition cost" means the amount received for trade-in plus the additional outlay.

"Amount received for trade-in" of an item of equipment traded in for replacement equipment means the amount that would have been paid for the replacement equipment without a trade-in minus the amount paid with the trade-in. The term refers to the actual difference, not necessarily the trade-in value shown on an invoice.

"Equipment" means tangible personal property having a useful life of more than one year and an acquisition cost of $300 or more per unit except that organizations subject to Cost Accounting Standards Board (CASB) regulations may use the CASB standard of $500 or more per unit and useful life of two years. An organization may use its own definition of equipment: *Provided,* That such definition would at least include all tangible personal property as defined herein.

"Personal property" means property of any kind except real property. It may be tangible—having physical existence, or intangible—having no physical existence, such as patents, inventions, and copyrights.

"Real property" means land, including land improvements, structures and appurtenances thereto, but excluding movable machinery and equipment.

"Replacement equipment" means property acquired to take the place of other equipment. To qualify as replacement equipment, it must serve the same function as the equipment replaced and must be of the same nature or character, although not necessarily the same model, grade, or quality.

"Supplies" means all tangible personal property other than equipment.

§ 74.133 Title to real property, equipment, and supplies.

Subject to the obligations and conditions set forth in this subpart, title to real property, equipment, and supplies acquired under a grant or subgrant shall vest, upon acquisition, in the grantee or subgrantee respectively.

Real Property

§ 74.134 Real property.

Except as otherwise provided by federal statutes, real property to which this subpart applies shall be subject to the following requirements, in addition to any other requirements imposed by the terms of the grant:

(a) *Use.* The property shall be used for the originally authorized purpose as long as needed for that purpose. When no longer so needed, approval of the granting agency may be requested to use the property for other purposes. Use for other purposes shall be limited to:

(1) Projects or programs supported by other Federal grants or assistance agreements.

(2) Activities not supported by other Federal grants or assistance agreements but having, nevertheless, purposes consistent with those of the legislation under which the original grant was made.

(b) *Transfer of title.* Approval may be requested from the granting agency to transfer title to an eligible third party for continued use for authorized purposes in accordance with paragraph (a) of this section. If approval is permissable under Federal statutes and is given, the terms of the transfer shall provide that the transferee shall assume all the rights and obligations of the transferor set forth in this subpart or in other terms of the grant or subgrant.

(c) *Disposition.* When the real property is no longer to be used as provided in paragraphs (a) and (b) of this section, the disposition instructions of the granting agency shall be followed. Those instructions will provide for one of the following alternatives:

(1) The property shall be sold and the Federal Government shall be paid an amount computed by multiplying the Federal share of the property (see § 74.142) times the proceeds from sale (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). Proper sales procedures shall be used that provide for competition to the extent practicable and result in the highest possible return.

(2) The recipient shall have the option either of selling the property in accordance with paragraph (c)(1) of this section or of retaining title. If title is retained, the Federal Government shall be paid an amount computed by multiplying the market value of the property by the Federal share of the property.

(3) The recipient shall transfer the title to either the Federal Government or an eligible non-Federal party named by the granting agency. The grantee shall be entitled to be paid an amount computed by multiplying the market value of the property by the non-Federal share of the property. If the property belonged to a subgrantee, see § 74.143 for subgrantee's share.

Equipment and Supplies

§ 74.135 Exemptions for equipment and supplies subject to certain statutes.

(a) Some Federal statutes, in certain circumstances, permit title to equipment or supplies acquired with grant funds to vest in the recipient without further obligation to the Federal Government or on such terms and conditions as deemed appropriate. An example of such a statute is the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95–224, which provides this authority for equipment and supplies

purchased with the funds of grants (and Federal contracts and cooperative agreements) for the conduct of basic or applied scientific research at nonprofit institutions of higher education or at nonprofit organizations whose primary purpose is the conduct of scientific research.

(b) If equipment is subject to a statute of the kind described in paragraph (a) of this section, it shall be exempt from the requirements in the remaining sections of this subpart. However, an item of such equipment having a unit acquisition cost of $1,000 or more shall be subject to § 74.136, concerning rights to require transfer, and, while subject to such a right, to the rules on replacement in § 74.138.

(c) If supplies are subject to a statute of the kind described in paragraph (a) of this section, they shall be exempt from all provisions of the remainder of this subpart which would otherwise apply.

§ 74.136 Rights to require transfer of equipment.

(a) *HEW right.* For items of equipment having a unit acquisition cost of $1,000 or more, the granting agency shall have the right to require transfer of the equipment (including title) to the Federal Government or to an eligible non-Federal party named by the granting agency. This right will normally be exercised by HEW granting agencies only if the project or program for which the equipment was acquired is transferred from one grantee to another. The right shall be subject to the following conditions:

(1) In order for the granting agency to exercise the right, a specific notice that it is exercising the right or considering doing so must be issued no later than the 120th day after the end of HEW grant support for the project or program for which the equipment was acquired. Furthermore:

(i) If the equipment is eligible for the exemptions in § 74.135 and ceases to be needed for the project or program for which it was acquired while the project or program is still being performed by the recipient, the notice must have been received by the grantee while the equipment was still needed for that project or program.

(ii) If the equipment is not eligible for those exemptions, the notice must have been received by the grantee before other permissible disposition of the equipment took place in accordance with § 74.139.

(2) If the right is exercised, the grantee shall be entitled to be paid any reasonable, resulting shipping or storage costs incurred, plus an amount computed by multiplying the market value of the equipment by the non-Federal share of the equipment. (See §§ 74.142 and 74.143.)

(b) *Right of parties awarding subgrants.* When a grantee awards a subgrant, it may reserve for itself a right similar to that in paragraph (a) of this section for items of equipment having a unit acquisition cost of $1,000 or more which are acquired under that subgrant. Without the approval of the granting agency, the right may be exercised only if the project or program for which the equipment was acquired is transferred to another subgrantee and only for the purpose of transferring the equipment to the new subgrantee for continued use in the project or program.

(c) *Equipment lists.* If at any time an awarding party is considering exercising its right to require transfer of equipment, it may require the recipient to furnish it a listing of all items of equipment that are subject to the right. This will enable the awarding party to determine which items, if any, should be transferred.

§ 74.137 Use of equipment.

(a) *Basic rule.* Equipment which has not been transferred under § 74.136 shall be used by the recipient in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original project or program, the recipient shall use the equipment, if needed, in other projects or programs currently or previously sponsored by the Federal Government, in the following order of priority:

(1) Projects or programs currently or previously sponsored by the same granting agency.

(2) Projects or programs currently or previously sponsored by other Federal agencies.

(b) *Shared use.* If equipment is being used less than full time in the project or program for which it was originally acquired, the recipient shall make it available for use in other projects or programs currently or previously sponsored by the Federal Government: *Provided,* Such other use will not interfere with the work on the original project or program. First preference for such other use shall be given to other projects or programs sponsored by the same granting agency.

(c) *Use by other recipients.* When the recipient can no longer use the equipment as required by paragraph (a) of this section, it may voluntarily make the equipment available for use on projects or programs currently or previously sponsored by the Federal Government which the recipient is supporting through subgrants or through non-Federal grants. If the recipient is a subgrantee, it may also voluntarily make the equipment available for use on projects or programs currently or previously sponsored by the Federal Government which are being conducted or supported by the grantee.

(d) *Other uses.* Unless the granting agency provides otherwise, while equipment is being used as described in the preceding paragraphs of this section, it may also be used part time for other purposes. However, use as described in those paragraphs shall be given priority over other uses.

§ 74.138 Replacement of equipment.

(a) Equipment may be exchanged for replacement equipment if needed. The replacement may take place either through trade-in or through sale and application of the proceeds to the acquisition cost of the replacement equipment. In either case, the transaction must be one which a prudent person would make in like circumstances.

(b) If an additional outlay to acquire the replacement equipment is charged as a direct cost to either Federal funds or required cost-sharing or matching under a Federal award, the replacement equipment shall be subject to whatever property requirements or exemptions are applicable to that award. If the award is a grant from HEW, the full acquisition cost of the replacement equipment shall determine which provisions of this subpart apply.

(c) For any replacement not covered by paragraph (b) of this section, the provisions of this subpart applicable to the equipment replaced shall carry over to the replacement equipment. However, none of the provisions of this subpart shall carry over if (1) the Federal share of the equipment replaced was 10 percent or less or (2) the product of that share times the amount received for trade-in or sale is $100 or less.

§ 74.139 Disposition of equipment.

When original or replacement equipment is no longer to be used in projects or programs currently or previously sponsored by the Federal Government, disposition of the equipment shall be made as follows:

(a) *Equipment with a unit acquisition cost of less than $1,000 and equipment with no further use value.* The equipment may be retained, sold, or otherwise disposed of, with no further obligation to the Federal Government.

(b) *All other equipment.* (1) The equipment may be retained or sold, and the Federal Government shall have a right to an amount calculated by multiplying the current market value or

the proceeds from sale by the Federal share of the equipment (see § 74.142). If part of the Federal share in the equipment came from an award under which the exemptions in § 74.135 were applicable, the amount due shall be reduced pro rata. In any case, if the equipment is sold, $100 or 10 percent of the total sales proceeds, whichever is greater, may be deducted and retained from the amount otherwise due for selling and handling expenses.

(2) If the grantee's project or program for which or under which the equipment was acquired is still receiving grant support from the same Federal program and if the granting agency approves, the net amount due may be used for allowable costs of that project or program. Otherwise, the net amount must be remitted to the granting agency by check.

§ 74.140 Equipment management requirements.

Procedures for managing equipment (including replacement equipment) until transfer, replacement, or disposition takes place shall, as a minimum, meet the following requirements:

(a) Property records shall be maintained accurately. (Retention and access requirements for these records are explained in Subpart D of this part.) For each item of equipment, the records shall include:

(1) A description of the equipment, including manufacturer's model number, if any.

(2) An identification number, such as the manufacturer's serial number.

(3) Identification of the grant under which the recipient acquired the equipment.

(4) The information needed to calculate the Federal share of the equipment. (See § 74.142.)

(5) Acquisition date and unit acquisition cost.

(6) Location, use, and condition of the equipment and the date the information was reported.

(7) All pertinent information on the ultimate transfer, replacement, or disposition of the equipment.

(b) A physical inventory of equipment shall be taken and the results reconciled with the property records at least once every 2 years to verify the existence, current utilization, and continued need for the equipment. A statistical sampling basis is acceptable. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the differences.

(c) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented.

(d) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.

(e) Where equipment is to be sold and the Federal Government is to have a right to part or all of the proceeds, selling procedures shall be established which will provide for competition to the extent practicable and result in the highest possible return.

§ 74.141 Supplies.

(a) If supplies exceeding $1,000 in total aggregate market value are left over upon termination or expiration of the grant or subgrant for which they were acquired and the supplies are not needed for any project or program currently or previously sponsored by the Federal Government, the grant shall be credited by an amount computed by multiplying the Federal share of the supplies times the current market value or, if the supplies are sold, the proceeds from sale. If the supplies are sold, 10 percent of the proceeds may be deducted and retained from the credit, for selling and handling expenses.

(b) For possible exemptions from this section, see § 74.135.

Federal Share of Real Property, Equipment, and Supplies

§ 74.142 Federal share of property.

Several sections of this subpart require a determination of the Federal (or non-Federal) share of real property, equipment, or supplies. In making such a determination, the following principles shall be observed:

(a) *General.* (1) Except as explained in the succeeding paragraphs of this section, the Federal share of the property shall be the same percentage as the Federal share of the acquiring party's total costs under the grant during the grant or subgrant year (or other funding period) to which the acquisition cost of the property was charged. For this purpose, "costs under the grant" means allowable costs which are either borne by the grant or counted towards satisfying a cost-sharing or matching requirement of the grant. Only costs are to be counted—not the value of third-party in-kind contributions. Moreover, if the property was acquired by a grantee that awarded subgrants, costs incurred by its subgrantees shall be included only to the extent borne by the subgrants. (For example, if a subgrantee incurred $200,000 of project costs, of which $150,000 was borne by the subgrant, only the $150,000 shall be included in the grantee's costs.)

(2) If the property is acquired by a subgrantee, the Federal share of the subgrantee's costs under the grant and hence of the property shall be calculated by multiplying the Federal share of the grantee's costs by the latter's share of the subgrantee's costs. For example, if the Federal share of a grantee's costs is 50 percent and the subgrant bears only 50 percent of a subgrantee's costs, then the Federal share of that subgrantee's costs (and of the property acquired by that subgrantee) is 25 percent.

(b) *Property acquired only partly under a grant.* (1) Sometimes only a part of the acquisition cost of an item of property is borne as a direct cost by the grant or counted as a direct cost towards a cost-sharing or matching requirement. The remainder might, for example, represent voluntary cost sharing or matching, or it might be charged to a different activity. Occasionally, the amount paid for the property is only a part of its value, and the remainder is donated as an in-kind contribution by the party that provided the property.

(2) To calculate the Federal share of such property, first determine the Federal share of the acquiring party's total costs under the grant, as explained in the paragraph (a) of this section. Then multiply that share by the percentage of the property's acquisition cost (or its market value, if the item was partly donated) which was borne as a direct cost by the grant or counted as a direct cost towards a cost-sharing or matching requirement.

(c) *Replacement equipment.* The Federal share of replacement equipment shall be calculated as follows:

(1) *Step 1.* Determine the Federal share (percentage) of the equipment replaced.

(2) *Step 2.* Determine the percentage of the replacement equipment's cost that was covered by the amount received for trade-in or the sales proceeds from the equipment replaced.

(3) *Step 3.* Multiply the step 1 percentage by the step 2 percentage.

(4) *Step 4.* If an additional outlay for the replacement equipment was charged as a direct cost either to HEW grant funds or to required cost-sharing or matching funds, calculate the Federal share attributable to that additional outlay as explained in paragraph (b)(2) of this section. Add that additional percentage to the step 3 percentage.

(d) *Institutional cost-sharing agreements.* If a grant is subject to an institutional cost-sharing agreement (see § 74.130(e)), the Federal share of property acquired under the grant shall

be calculated as though there were no cost-sharing requirement applicable to the grant (that is, as if all the grantee's cost sharing were voluntary).

§ 74.143 Subgrantee's share of market value or sales proceeds.

Where this subpart requires a sharing of the market value or sales proceeds of property acquired under a subgrant, the non-Federal share shall be proportionally divided between the grantee and the subgrantee. The subgrantee shall be entitled to the amount it would have received or retained if the award to it had been made directly by the Federal Government. The remainder of the non-Federal share shall belong to the grantee.

Intangible Personal Property

§ 74.144 Inventions and patents.

HEW's regulations on inventions and patents arising out of activities assisted by a grant are set forth in parts 6 and 8 of this title.

§ 74.145 Copyrights.

(a) *Works under grants.* Unless otherwise provided by the terms of the grant, when copyrightable material is developed in the course of or under a grant, the grantee is free to copyright the material or permit others to do so.

(b) *Works under subgrants.* Unless otherwise provided by the terms of the grant or subgrant, when copyrightable material is developed in the course of or under a subgrant, the subgrantee is free to copyright the material or permit others to do so.

(c) *HEW rights.* If any copyrightable material is developed in the course of or under a HEW grant or subgrant, HEW shall have a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for Federal Government purposes. A grantee awarding a subgrant may reserve a similar right for itself with respect to copyrightable material developed under that subgrant.

(d) *Exemption of student-developed works.* HEW awards training grants and other kinds of grants under which individuals are provided stipends or other financial assistance for the primary purpose of aiding them to further their education or training. Except as provided by the terms of the grant, copyrightable material developed by an individual or group of individuals in the course of education or training pursued with such assistance shall not be subject to the HEW right described in paragraph (c) of this section, unless the development of the material also receives other forms of support under the same or another HEW grant (such as a research grant).

Subpart P—Procurement Standards

§ 74.160 Scope of subpart; terminology.

(a) This subpart contains standards for use by recipients in establishing procedures for the procurement of supplies, equipment, construction, and other services whose cost is borne in whole or in part as a direct cost by Federal grant funds.

(b) No additional procurement standards or requirements shall be imposed by awarding parties upon recipients unless specifically required by Federal statutes or Executive Orders.

(c) As used in this subpart:

(1) "Formal advertising" refers to that procurement method which involves adequate purchase description, sealed bids, and public opening of bids.

(2) "Negotiation" refers to any method of procurement other than formal advertising.

§ 74.161 General.

(a) Recipients may use their own procurement policies: *Provided,* That procurements subject to this subpart are made in accordance with the standards in this subpart.

(b) The standards in this subpart do not relieve the recipient of the contractual responsibilities arising under its contracts. The recipient is the responsible authority, without recourse to HEW, regarding issues arising out of its procurements. This includes but is not limited to: Disputes, claims, protests of award, source evaluation, or other matters of a contractual nature. Matters concerning violation of law are to be referred to such local, State, or Federal authority as may have proper jurisdiction.

§ 74.162 Code of conduct.

(a) The recipient shall maintain a code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the awarding and administration of contracts that are subject to this subpart. The code or standards shall provide for disciplinary actions to be applied for violations of the code or standards by the recipient's officers, employees, or agents. For governmental recipients, such disciplinary actions are required only to the extent otherwise permissible under the Government's laws, rules, or regulations. To the extent permissible under its laws, rules, or regulations, the governmental recipient shall also provide for actions to be taken against contractors or their agents who wrongfully take part in a violation of the code or standards of conduct.

(b) The recipient's officers, employees or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or potential contractors. This is not intended to preclude bona-fide institutional fund-raising activities.

(c) No employee, officer, or agent of a nongovernmental recipient shall participate in the selection, award, or administration of a contract subject to this subpart where, to his or her knowledge, any of the following has a financial interest in that contract:

(1) The employee, officer, or agent;

(2) Any member of his or her immediate family;

(3) His or her partner;

(4) An organization in which any of the above is an officer, director, or employee;

(5) A person or organization with whom any of the above individuals is negotiating or has any arrangement concerning prospective employment.

§ 74.163 Free competition.

(a) All procurement transactions shall be conducted in a manner to provide, to the maximum extent practicable, open and free competition.

(b) The recipient should be alert to organizational conflicts of interest or noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In particular, a contractor that develops or drafts specifications, requirements, a statement of work, an invitation for bids or a request for proposals for a particular procurement by a nongovernmental recipient should be excluded from competing for that procurement except when, upon request of the recipient, the granting agency waives this requirement for a particular procurement.

(c) Solicitations shall clearly set forth all requirements that the bidder/offerer must fulfill in order for his bid/offer to be evaluated. Awards shall be made to the responsible bidder/offeror whose bid/offer is responsive to the solicitation and is most advantageous to the recipient, price and other factors considered. Factors such as discounts, transportation costs, and taxes may be considered in determining the lowest bid. Any and all bids/offers may be rejected when it is in the recipient's interest to do so, and, in the case of governmental recipients, such rejections are in accordance with the government's applicable law, rules, or regulations.

§ 74.164 Procedural requirements.

The recipient shall establish procurement procedures which provide for, as a minimum, the following:

(a) Proposed procurement actions shall follow a procedure to assure that unnecessary or duplicative items are not purchased. Where appropriate, an analysis shall be made of lease and purchase alternatives to determine which would be the most economical, practical procurement.

(b) Solicitations for goods and services shall be based upon a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. "Brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement, and when so used the specific features of the named brand which must be met by bidders/offerors should be clearly specified.

(c) Where applicable, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)) shall be observed.

(d) Positive efforts shall be made by procuring parties to utilize small business and minority-owned business sources of supplies and services. Such efforts should allow these sources the maximum feasible opportunity to compete for contracts subject to this subpart. [1]

(e) The type of procuring instruments used—e.g., fixed-price contracts, cost reimbursable contracts, purchase orders, incentive contracts—shall be determined by the recipient but must be appropriate for the particular procurement and for promoting the best interest of the grant project or program involved. The "cost-plus-a-percentage-of-cost" method of contracting shall not be used.

(f) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources.

(g) The terms of the grant may require that the following be submitted for prior approval of the granting agency if the aggregate expenditure is expected to exceed $5,000: (1) Any proposed sole source contract and (2) any contract which a nongovernmental recipient proposes to award after seeking competition but receiving only one bid or proposal.

(h) Nongovernmental recipients should make some form of price or cost analysis in connection with every negotiated procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost proposed by the offeror to determine reasonableness, allocability and allowability.

(i) Procurement records and files for purchases in excess of $10,000 shall include the following:

(1) Basis for contractor selection;

(2) Justification for lack of competition when competitive bids or offers are not obtained;

(3) Basis for award cost or price.

(j) A system for contract administration shall be maintained to ensure contractor conformance with terms, conditions and specifications of the contract, and to ensure adequate and timely followup of all purchases.

§ 74.165 Requirement for governments to use formal advertising.

(a) Except as provided in paragraph (b) of this section, in making procurements that are subject to this subpart, governmental recipients shall use formal advertising.

(b) Procurements may be negotiated if it is not practicable or feasible to use formal advertising. Generally, such procurements may be negotiated if one or more of the following conditions prevail:

(1) The public exigency will not permit the delay incident to advertising.

(2) The material or service to be procured is available from only one person or firm.

(3) The aggregate amount involved does not exceed $10,000.

(4) The contract is for personal or professional services, or for any service to be rendered by a university, college, or other educational institution.

(5) The material or services are to be procured and used outside the limits of the United States and its possessions.

(6) No acceptable bids have been received after formal advertising.

(7) The purchases are for highly perishable materials or medical supplies, for material or services where the prices are established by law, for technical items or equipment requiring standardization and interchangeability of parts with existing equipment, for experimental, developmental or research work, for supplies purchased for authorized resale, or for technical or specialized supplies requiring substantial intitial investment for manufacture.

(8) Formal advertising is otherwise not practicable or feasible, and negotiation is authorized by applicable law, rules, or regulations.

(c) Notwithstanding the existence of circumstances justifying negotiation, competition shall be obtained to the maximum extent practicable.

(d) For every negotiated procurement in excess of $10,000 by a governmental recipient, written justification for the use of negotiation in lieu of formal advertising shall be included in the government's procurement records and files, in addition to the information required by § 74.164(i). The justification may be on a class basis, i.e., covering a group of related or similar contracts, or it may be on an individual contract basis.

§ 74.166 Contract provisions.

(a) *Scope.* This section contains requirements relating to provisions that must be included in contracts that are subject to this part. The requirements shall also apply to subcontracts of any tier under such contracts, and the term "contracts" in this section shall be construed as including subcontracts.

(b) *General.* All contracts shall contain sufficient provisions to define a sound and complete agreement.

(c) *Administrative remedies for violations.* Contracts in excess of $10,000 shall contain contractual provisions or conditions that will allow for administrative, contractual or legal remedies in instances in which contractors violate or breach contract terms, and provide for such remedial actions as appropriate.

(d) *Termination provisions.* Contracts in excess of $10,000 shall contain suitable provisions for termination by the party awarding the contract, including the manner by which termination will be effected and the basis for settlement. These contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of

[1] Advice and assistance regarding the use of small or minority businesses may be obtained from the following Federal organizations:

1. The Small Business Administration and its field offices.
2. The Office of Minority Business Enterprise, Department of Commerce.
3. The Office of Facilities Engineering, HEW and its regional offices (for assistance in identifying minority-owned firms interested in performing construction, alteration, or renovation work).
4. The Office for Civil Rights, HEW.
5. The Office of Grants and Procurement, HEW.

circumstances beyond the control of the contractor.

(e) *E.O. 11246.* Where applicable, construction contracts in excess of $10,000 shall contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

(f) *Copeland Act.* Contracts in excess of $2,000 for construction or repair shall include a provision for compliance with the Copeland "Anti-Kick-Back Act" (18 U.S.C. 874) as supplemented in Department of Labor regulation (29 CFR Part 3). All suspected or reported violations shall be reported to the granting agency by the grantee.

(g) *Davis-Bacon Act.* When required by the Federal legislation governing the grant program, all construction contracts in excess of $2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a–7) as supplemented by Department of Labor regulations (29 CFR Part 5). All suspected or reported violations shall be reported to the granting agency by the grantee.

(h) *Contract Work Hours and Safety Standards Act.* All contracts subject to the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) shall include a provision requiring the contractor to comply with the applicable sections of the act and the Department of Labor's supplementing regulations (29 CFR Parts 5 and 1926).

(i) *Inventions and patents.* Contracts which may give rise to inventions subject to parts 6 and 8 of this title shall include a provision requiring compliance with those parts.

(j) *Access to Records.* Contracts that are subject to Subpart D of this part shall include a provision reflecting § 74.24(c) on rights of access to the contractor's records.

(k) *Clean Air and Water Acts.* Contracts in excess of $100,000 shall contain provisions requiring compliance with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act as amended (42 U.S.C. 1857 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported in writing to the appropriate regional office of the Environmental Protection Agency, and a copy of the report shall be submitted to the granting agency. (See 40 CFR Part 15 for relevant regulations of the Environmental Protection Agency.)

Subpart Q—Cost Principles

§ 74.170 Scope of subpart.

This subpart identifies the principles to be used in determining costs applicable to grants, subgrants, and cost-type contracts under grants and subgrants.

§ 74.171 Governments.

The principles to be used in determining the allowable costs of activities conducted or administered by governments are in Appendix C to this part.

§ 74.172 Institutions of higher education.

(a) *Research and development.* The principles for determining the allowable costs of research and development work performed by institutions of higher education (other than for-profit institutions) are in part I of Appendix D to this part.

(b) *Training and other educational services.* The principles for determining the allowable costs of training and other educational services provided by institutions of higher education (other than for-profit institutions) are in part II of Appendix D to this part.

(c) *Other activities.* Appendix D to this part shall be used as a guide for determining the allowable costs of other activities conducted by institutions of higher education (other than for-profit institutions).

§ 74.173 Hospitals.

(a) *Research and development.* The principles for determining the allowable costs of research and development work performed by hospitals are in Appendix E to this part.

(b) *Other activities.* Appendix E to this part shall be used as a guide for determining the allowable costs of other activities conducted by hospitals.

§ 74.174 Other nonprofit organizations.

(a) *Nonconstruction awards.* Under nonconstruction awards, the principles for determining the allowable costs of activities conducted by nonprofit organizations other than institutions of higher education, hospitals, and governmental organizations are in Appendix F to this part.

(b) *Construction awards.* Appendix F to this part shall be used as a guide for determining the allowable costs of work under construction awards to nonprofit organizations (other than institutions of higher education, hospitals and governmental organizations).

§ 74.175 Subgrants and cost-type contracts.

(a) The cost principles applicable to a subgrantee or cost-type contractor under an HEW grant will not necessarily be the same as those applicable to the grantee. For example, where a State government awards a subgrant or cost-type contract to an institution of higher education, Appendix D to this part would apply to the costs incurred by the institution of higher education, even though Appendix C would apply to the costs incurred by the State.

(b) The principles to be used in determining the allowable costs of work performed by for-profit organizations (other than hospitals) under cost-type contracts awarded to them under HEW grants are in 41 CFR Subpart 1–15.2.

§ 74.176 Costs allowable with approval.

Each set of cost principles identifies certain costs that, in order to be allowable, must be approved by the granting agency. Other costs do not require approval. The following procedures govern approval of these costs.

(a) When costs are treated as indirect costs (or are allocated pursuant to a government-wide cost allocation plan), acceptance of the costs as part of the indirect cost rate or cost allocation plan shall constitute approval.

(b)(1) When the costs are treated as direct costs, they must be approved in advance by the awarding party.

(2) If the costs are specified in the budget, approval of the budget shall constitute approval of the costs.

(3) If the costs are not specified in the budget, or there is no approved budget, the recipient shall obtain specific prior approval in writing from the awarding party. For this purpose the prior approval procedures of § 74.102 shall be followed, except that for formula or mandatory grants, the granting agency's written approval may be signed by any authorized official of the granting agency.

(c) The awarding party may waive or conditionally waive the requirement for its approval of the costs. Such a waiver shall apply only to the requirement for approval. If, upon audit or otherwise, it is determined that the costs do not meet other requirements or tests for allowability specified by the applicable cost principles, such as reasonableness and necessity, the costs may be disallowed.

(d) In the case of subgrants and cost-type contracts, no approval shall be given which is inconsistent with the purpose or the terms of the Federal grant.

Appendix A [Reserved]

Appendix B [Reserved]

Appendix C—Principles for Determining Costs Applicable to Grants and Contracts With State and Local Governments

Part I—General

A. Purpose and Scope

1. *Objectives.* This appendix sets forth principles for determining the allowable costs of programs administered by State and local governments under grants from and contracts with the Federal Government. The principles are for the purpose of cost determination and are not intended to identify the circumstances or dictate the extent of Federal and State or local participation in the financing of a particular grant. They are designed to provide that federally assisted programs bear their fair share of costs recognized under these principles, except where restricted or prohibited by law. No provision for profit or other increment above cost is intended.

2. *Policy guides.* The application of these principles is based on the fundamental premises that:

a. State and local governments are responsible for the efficient and effective administration of grant and contract programs through the application of sound management practices.

b. The grantee or contractor assumes the responsibility for seeing that federally assisted program funds have been expended and accounted for consistent with underlying agreements and program objectives.

c. Each grantee or contractor organization, in recognition of its own unique combination of staff facilities and experience, will have the primary responsibility for employing whatever form of organization and management techniques may be necessary to assure proper and efficient administration.

3. *Application.* These principles will be applied in determining costs incurred by State and local governments under Federal grants and cost reimbursement type contracts (including subgrants and subcontracts) except those with (a) publicly financed educational institutions subject to Appendix D to this part and (b) publicly owned hospitals and other providers of medical care subject to requirements of Appendix E to this part.

B. Definitions

1. *Approval or authorization of the grantor Federal agency* means documentation evidencing consent prior to incurring specific cost.

2. *Cost allocation plan* means the documentation identifying, accumulating, and distributing allowable costs under grants and contracts together with the allocation methods used.

3. *Cost,* as used herein, means cost as determined on a cash, accrual, or other basis acceptable to the Federal grantor agency as a discharge of the grantee's accountability for Federal funds.

4. *Cost objective* means a pool, center, or area established for the accumulation of cost. Such areas include organizational units, functions, objects or items of expense, as well as ultimate cost objectives including specific grants, projects, contracts, and other activities.

5. *Federal agency* means the Department of Health, Education, and Welfare.

6. Grant means an agreement between the Federal Government and a State or local government whereby the Federal Government provides funds or aid in kind to carry out specified programs, services, or activities. The principles and policies stated in this appendix as applicable to grants in general also apply to any federally sponsored cost reimbursement type of agreement performed by a State or local government, including contracts, subcontracts and subgrants.

7. *Grant program* means those activities and operations of the grantee which are necessary to carry out the purposes of the grant, including any portion of the program financed by the grantee.

8. *Grantee* means the department or agency of State or local government which is responsible for administration of the grant.

9. *Local unit* means any political subdivision of government below the State level.

10. *Other State or local agencies* means departments or agencies of the State or local unit which provide goods, facilities, and services to a grantee.

11. *Services,* as used herein, means goods and facilities, as well as services.

12. *Supporting services* means auxiliary functions necessary to sustain the direct effort involved in administering a grant program or an activity providing service to the grant program. These services may be centralized in the grantee department or in some other agency, and include procurement, payroll, personnel functions, maintenance and operation of space, data processing, accounting budgeting, auditing, mail and messenger service, and the like.

C. Basic Guidelines

1. *Factors affecting allowability of costs.* To be allowable under a grant program, costs must meet the following general criteria:

a. Be necessary and reasonable for proper and efficient administration of the grant program, be allocable thereto under these principles, and, except as specifically provided herein, not be a general expense required to carry out the overall responsibilities of State or local governments.

b. Be authorized or not prohibited under State or local laws or regulations.

c. Conform to any limitations or exclusions set forth in these principles, Federal laws, or other governing limitations as to types or amounts of cost items.

d. Be consistent with policies, regulations, and procedures that apply uniformly to both federally assisted and other activities of the unit of government of which the grantee is a part.

e. Be accorded consistent treatment through application of generally accepted accounting principles appropriate to the circumstances.

f. Not be allocable to or included as a cost of any other federally financed program in either the current or a prior period.

g. Be net of all applicable credits.

2. *Allocable costs.* a. A cost is allocable to a particular cost objective to the extent of benefits received by such objective.

b. Any cost allocable to a particular grant or cost objective under the principles provided for in this appendix may not be shifted to other Federal grant programs to overcome fund deficiencies, avoid restrictions imposed by law or grant agreements, or for other reasons.

c. Where an allocation of joint cost will ultimately result in charges to a grant program, an allocation plan will be required as prescribed in section J.

3. *Applicable credits.* a. Applicable credits refer to those receipts or reduction of expenditure-type transactions which offset or reduce expense items allocable to grants as direct or indirect costs. Examples of such transactions are: purchase discounts; rebates or allowances; recoveries or indemnities on losses; sale of publications, equipment, and scrap; income from personal or incidental services; and adjustments of overpayments or erroneous charges.

b. Applicable credits may also arise when Federal funds are received or are available from sources other than the grant program involved to finance operations or capital items of the grantee. This includes costs arising from the use or depreciation of items donated or financed by the Federal Government to fulfill matching requirements under another grant program. These types of credits should likewise be used to reduce related expenditures in determining the rates or amounts applicable to a given grant.

D. Composition of Cost

1. *Total cost.* The total cost of a grant program is comprised of the allowable direct cost incident to its performance, plus its allocable portion of allowable indirect costs, less applicable credits.

2. *Classification of costs.* There is no universal rule for classifying certain costs as either direct or indirect under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to the grant or other ultimate cost objective. It is essential therefore that each item of cost be treated consistently either as a direct or an indirect cost. Specific guides for determining direct and indirect costs allocable under grant programs are provided in the sections which follow.

E. Direct Costs

1. *General.* Direct costs are those that can be identified specifically with a particular cost objective. These costs may be charged directly to grants, contracts, or to other programs against which costs are finally lodged. Direct costs may also be charged to cost objectives used for the accumulation of costs pending distribution in due course to grants and other ultimate cost objectives.

2. *Application.* Typical direct costs chargeable to grant programs are:

a. Compensation of employees for the time and effort devoted specifically to the execution of grant programs.

b. Cost of materials acquired, consumed, or expended specifically for the purpose of the grant.

c. Equipment and other approved capital expenditures.

d. Other items of expense incurred specifically to carry out the grant agreement.

e. Services furnished specifically for the grant program by other agencies, provided such charges are consistent with criteria outlined in Section G of these principles.

F. Indirect Costs

1. *General.* Indirect costs are those (a) incurred for a common or joint purpose benefiting more than one cost objective, and (b) not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the results achieved. The term "indirect costs," as used herein, applies to costs of this type originating in the grantee department, as well as those incurred by other departments in supplying goods, services, and facilities, to the grantee department. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect cost within a grantee department or in other agencies providing services to a grantee department. Indirect cost pools should be distributed to benefiting cost objectives on bases which will produce an equitable result in consideration or relative benefits derived.

2. *Grantee departmental indirect costs.* Al grantee departmental indirect costs, including the various levels of supervision, are eligible for allocation to grant programs provided they meet the conditions set forth in this Appendix. In lieu of determining the actual amount of grantee departmental indirect cost allocable to a grant program, the following methods may be used:

a. *Predetermined fixed rates for indirect costs.* A predetermined fixed rate for computing indirect costs applicable to a grant may be negotiated annually in situations where the cost experience and other pertinent facts available are deemed sufficient to enable the contracting parties to reach an informed judgment (1) as to the probable level of indirect costs in the grantee department during the period to be covered by the negotiated rate, and (2) that the amount allowable under the predetermined rate would not exceed actual indirect cost.

b. *Negotiated lump sum for overhead.* A negotiated fixed amount in lieu of indirect costs may be appropriate under circumstances where the benefits derived from a grantee department's indirect services cannot be readily determined as in the case of small, self-contained or isolated activity. When this method is used, a determination should be made that the amount negotiated will be approximately the same as the actual indirect cost that may be incurred. Such amounts negotiated in lieu of indirect costs will be treated as an offset to total indirect expenses of the grantee department before allocation to remaining activities. The base on which such remaining expenses are allocated should be appropriately adjusted.

3. *Limitation on indirect costs.* a. Federal grants may be subject to laws that limit the amount of indirect cost that may be allowed. Agencies that sponsor grants of this type will establish procedures which will assure that the amount actually allowed for indirect costs under each such grant does not exceed the maximum allowable under the statutory limitation or the amount otherwise allowable under this Appendix, whichever is the smaller.

b. When the amount allowable under a statutory limitation is less than the amount otherwise allocable as indirect costs under this Appendix, the amount not recoverable as indirect costs under a grant may not be shifted to another federally sponsored grant program or contract.

G. Cost Incurred by Agencies Other Than the Grantee

1. *General.* The cost of service provided by other agencies only may include allowable direct costs of the service plus a pro rata share of allowable supporting costs (section B.12.) and supervision directly required in performing the service, but not supervision of a general nature such as that provided by the head of a department and his staff assistants not directly involved in operations. However, supervision by the head of a department or agency whose sole function is providing the service furnished would be an eligible cost. Supporting costs include those furnished by other units of the supplying department or by other agencies.

2. *Alternative methods of determining indirect cost.* In lieu of determining actual indirect cost related to a particular service furnished by another agency, either of the following alternative methods may be used provided only one method is used for a specific service during the fiscal year involved.

a. *Standard indirect rate.* An amount equal to 10 percent of direct labor cost in providing the service performed by another State agency (excluding overtime, shift, or holiday premiums and fringe benefits) may be allowed in lieu of actual allowable indirect cost for that service.

b. *Predetermined fixed rate.* A predetermined fixed rate for indirect cost of the unit or activity providing service may be negotiated as set forth in section F.2.a.

H. Cost Incurred by Grantee Department for Others

1. *General.* The principles provided in section G. will also be used in determining the cost of services provided by the grantee department to another agency.

I. [Reserved]

J. Cost Allocation Plan

1. *General.* A plan for allocation of costs will be required to support the distribution of any joint costs related to the grant program. All costs included in the plan will be supported by formal accounting records which will substantiate the propriety of eventual charges.

2. *Requirements.* The allocation plan of the grantee department should cover all joint costs of the department as well as costs to be allocated under plans of other agencies or organizational unit which are to be included in the costs of federally sponsored programs. The cost allocation plans of all the agencies rendering services to the grantee department, to the extent feasible, should be presented in a single document. The allocation plan should contain, but not necessarily be limited to, the following:

a. The nature and extent of services provided and their relevance to the federally sponsored programs.

b. The items of expense to be included.

c. The methods to be used in distributing cost.

3. *Instructions for preparation of cost allocation plans.* The Department of Health, Education, and Welfare, in consultation with the other Federal agencies concerned, will be responsible for developing and issuing the instructions for use by State and local government grantees in preparation of cost allocation plans. This responsibility applies to both central support services at the State and local government level as well as indirect cost proposals of individual grantee departments.

4. *Negotiation and approval of indirect cost proposals for States.* a. The Department of Health, Education, and Welfare, in collaboration with the other Federal agencies concerned, will be responsible for negotiation, approval and audit of cost allocation plans, which will be submitted to it by the States. These plans will cover central support service costs of the State.

b. At the grantee department level in a State, a single Federal agency will have responsibility similar to that set forth in a. above for the negotiation, approval and audit of the indirect cost proposal. Cognizant Federal agencies have been designated for this purpose. Changes which may be required from time to time in agency assignments will be arranged by the Department of Health, Education, and Welfare in collaboration with the other interested agencies, and submitted to the Office of Management and Budget for final approval. A current list of agency assignments will be maintained by the Department of Health, Education, and Welfare.

c. Questions concerning the cost allocation plans approved under a. and b. above should be directed to the agency responsible for such approvals.

5. *Negotiation and approval of indirect cost proposals for local governments.* a. Cost allocation plans will be retained at the local government level for audit by a designated Federal agency except in those cases where that agency requests that cost allocation plans be submitted to it for negotiation and approval.

b. A list of cognizant Federal agencies assigned responsibility for negotiation, approval and audit of central support service cost allocation plans at the local government level is being developed. Changes which may be required from time to time in agency assignments will be arranged by the Department of Health, Education, and Welfare in collaboration with the other interested agencies, and submitted to the Office of Management and Budget for final approval. A current list of agency assignments will be maintained by the Department of Health, Education, and Welfare.

c. At the grantee department level of local governments, the Federal agency with the predominant interest in the work of the

grantee department will be responsible for necessary negotiation, approval and audit of the indirect cost proposal.

6. *Resolution of problems.* To the extent that problems are encountered among the Federal agencies in connection with 4. and 5. above, the Office of Management and Budget will lend assistance as required.

Part II—Standards for Selected Items of Cost

A. Purpose and Applicability

1. *Objective.* This part provides standards for determining the allowability of selected items of cost.

2. *Application.* These standards will apply irrespective of whether a particular item of cost is treated as direct or indirect cost. Failure to mention a particular item of cost in the standards is not intended to imply that it is either allowable or unallowable, rather determination of allowability in each case should be based on the treatment of standards provided for similar or related items of cost. The allowability of the selected items of cost is subject to the general policies and principles stated in Part I of this appendix.

B. Allowable Costs

1. *Accounting.* The cost of establishing and maintaining accounting and other information systems required for the management of grant programs is allowable. This includes cost incurred by central service agencies for these purposes. The cost of maintaining central accounting records required for overall State or local government purposes, such as appropriation and fund accounts by the Treasurer, Comptroller, or similar officials, is considered to be a general expense of government and is not allowable.

2. *Advertising.* Advertising media includes newspapers, magazines, radio, and television programs, direct mail, trade papers, and the like. The advertising costs allowable are those which are solely for:

a. Recruitment of personnel required for the grant program.

b. Solicitation of bids for the procurement of goods and services required.

c. Disposal of scrap or surplus materials acquired in the performance of the grant agreement.

d. Other purposes specifically provided for in the grant agreement.

3. *Advisory councils.* Costs incurred by State advisory councils or committees established pursuant to Federal requirements to carry out grant programs are allowable. The cost of like organizations is allowable when provided for in the grant agreement.

4. *Audit service.* The cost of audits necessary for the administration and management of functions related to grant programs is allowable.

5. *Bonding.* Costs of premiums on bonds covering employees who handle grantee agency funds are allowable.

6. *Budgeting.* Costs incurred for the development, preparation, presentation, and execution of budgets are allowable. Costs for services of a central budget office are generally not allowable since these are costs of general government. However, where employees of the central budget office actively participate in the grantee agency's budget process, the cost of identifiable services is allowable.

7. *Building lease management.* The administrative cost for lease management which includes review of lease proposals, maintenance of a list of available property for lease, and related activities is allowable.

8. *Central stores.* The cost of maintaining and operating a central stores organization for supplies, equipment, and materials used either directly or indirectly for grant programs is allowable.

9. *Communications.* Communication costs incurred for telephone calls or service, telegraph, teletype service, wide area telephone service (WATS), centrex, telpak (tie lines), postage, messenger service and similar expenses are allowable.

10. *Compensation for personal services*—a. *General.* Compensation for personal services includes all remuneration, paid currently or accrued, for services rendered during the period of performance under the grant agreement, including but not necessarily limited to wages, salaries, and supplementary compensation and benefits (section B.13.). The costs of such compensation are allowable to the extent that total compensation for individual employees: (1) is reasonable for the services rendered. (2) follows an appointment made in accordance with State or local government laws and rules and which meets Federal merit system or other requirements, where applicable, and (3) is determined and supported as provided in b. below. Compensation for employees engaged in federally assisted activities will be considered reasonable to the extent that it is consistent with that paid for similar work in other activities of the State or local government. In cases where the kinds of employees required for the federally assisted activities are not found in the other activities of the State or local government, compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the employing government competes for the kind of employees involved. Compensation surveys providing data representative of the labor market involved will be an acceptable basis for evaluating reasonableness.

b. *Payroll and distribution* of time. Amounts charged to grant programs for personal services, regardless of whether treated as direct or indirect costs, will be based on payrolls documented and approved in accordance with generally accepted practice of the State or local agency. Payrolls must be supported by time and attendance or equivalent records for individual employees. Salaries and wages of employees chargeable to more than one grant program or other cost objective will be supported by appropriate time distribution records. The method used should produce an equitable distribution of time and effort.

11. *Depreciation and use allowances.* a. Grantees may be compensated for the use of buildings, capital improvements, and equipment through use allowances or depreciation. Use allowances are the means of providing compensation in lieu of depreciation or other equivalent costs. However, a combination of the two methods may not be used in connection with a single class of fixed assets.

b. The computation of depreciation or use allowance will be based on acquisition cost. Where actual cost records have not been maintained, a reasonable estimate of the original acquisition cost may be used in the computation. The computation will exclude the cost or any portion of the cost of buildings and equipment donated or borne directly or indirectly by the Federal Government through charges to Federal grant programs or otherwise, irrespective of where title was originally vested or where it presently resides. In addition, the computation will also exclude the cost of land. Depreciation or a use allowance on idle or excess facilities is not allowable, except when specifically authorized by the grantor Federal agency.

c. Where the depreciation method is followed, adequate property records must be maintained, and any generally accepted method of computing depreciation may be used. However, the method of computing depreciation must be consistently applied for any specific asset or class of assets for all affected federally sponsored programs and must result in equitable charges considering the extent of the use of the assets for the benefit of such programs.

d. In lieu of depreciation, a use allowance for buildings and improvements may be computed at an annual rate not exceeding 2 percent of acquisition cost. The use allowance for equipment (excluding items properly capitalized as building cost) will be computed at an annual rate not exceeding 6⅔ percent of acquisition cost of usable equipment.

e. No depreciation or use charge may be allowed on any assets that would be considered as fully depreciated: *provided, however,* That reasonable use charges may be negotiated for any such assets if warranted after taking into consideration the cost of the facility or item involved, the estimated useful life remaining at time of negotiation, the effect of any increased maintenance charges or decreased efficiency due to age, and any other factors pertinent to the utilization of the facility or item for the purpose contemplated.

12. *Disbursing service.* The cost of disbursing grant program funds by the Treasurer or other designated officer is allowable. Disbursing services cover the processing of checks or warrants, from preparation to redemption, including the necessary records of accountability and reconciliation of such records with related cash accounts.

13. *Employee fringe benefits.* Costs identified under a. and b. below are allowable to the extent that total compensation for employees is reasonable as defined in section B.10.

a. Employee benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, sick leave, court leave, military leave, and the like, if they are: (1) provided pursuant to an approved leave system, and (2) the cost thereof is equitably allocated to all related activities, including grant programs.

b. Employee benefits in the form of employers' contribution or expenses for social security, employees' life and health insurance plans, unemployment insurance coverage, workmen's compensation insurance, pension plans, severance pay, and the like, provided such benefits are granted under approved plans and are distributed equitably to grant programs and to other activities.

14. *Employee morale, health, and welfare costs.* The costs of health of first-aid clinics and/or infirmaries, recreational facilities, employees' counseling services, employee information publications, and any related expenses incurred in accordance with general State or local policy are allowable. Income generated from any of these activities will be offset against expenses.

15. *Exhibits.* Costs of exhibits relating specifically to the grant programs are allowable.

16. *Legal expenses.* The cost of legal expenses required in the administration of grant programs is allowable. Legal services furnished by the chief legal officer of a State or local government or his staff solely for the purpose of discharging his general responsibilities as legal officer are unallowable. Legal expenses for the prosecution of claims against the Federal Government are unallowable.

17. *Maintenance and repair.* Costs incurred for necessary maintenance, repair, or upkeep of property which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable.

18. *Materials and supplies.* The cost of materials and supplies necessary to carry out the grant programs is allowable. Purchases made specifically for the grant program should be charged thereto at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received by the grantee. Withdrawals from general stores or stockrooms should be charged at cost under any recognized method of pricing consistently applied. Incoming transportation charges are a proper part of material cost.

19. *Memberships, subscriptions and professional activities*—a. *Memberships.* The cost of membership in civic, business, technical and professional organizations is allowable provided: (1) the benefit from the membership is related to the grant program, (2) the expenditure is for agency membership, (3) the cost of the membership is reasonably related to the value of the services or benefits received, and (4) the expenditure is not for membership in an organization which devotes a substantial part of its activities to influencing legislation.

b. *Reference material.* The cost of books and subscriptions to civic, business, professional, and technical periodicals is allowable when related to the grant program.

c. *Meetings and conferences.* Costs are allowable when the primary purpose of the meeting is the dissemination of technical information relating to the grant program and they are consistent with regular practices followed for other activities of the grantee.

20. *Motor pools.* The costs of a service organization which provides automobiles to user grantee agencies at a mileage or fixed rate and/or provides vehicle maintenance, inspection and repair services are allowable.

21. *Payroll preparation.* The cost of preparing payrolls and maintaining necessary related wage records is allowable.

22. *Personnel administration.* Costs for the recruitment, examination, certification, classification, training, establishment of pay standards, and related activities for grant programs, are allowable.

23. *Printing and reproduction.* Costs for printing and reproduction services necessary for grant administration, including but not limited to forms, reports, manuals, and informational literature, are allowable. Publication costs of reports or other media relating to grant program accomplishments or results are allowable when provided for in the grant agreement.

24. *Procurement service.* The cost of procurement service, including solicitation of bids, preparation and award of contracts, and all phases of contract administration in providing goods, facilities and services for grant programs, is allowable.

25. *Taxes.* In general, taxes or payments in lieu of taxes which the grantee agency is legally required to pay are allowable.

26. *Training and education.* The cost of in-service training, customarily provided for employee development which directly or indirectly benefits grant programs, is allowable. Out-of-service training involving extended periods of time is allowable only when specifically authorized by the grantor agency.

27. *Transportation.* Costs incurred for freight, cartage, express, postage, and other transportation costs relating either to goods purchased, delivered, or moved from one location to another, are allowable.

28. *Travel.* Travel costs are allowable for expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business incident to a grant program. Such costs may be charged on an actual basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip, and results in charges consistent with those normally allowed in like circumstances in nonfederally sponsored activities. The difference in cost between first-class air accommodations and less-than-first-class air accommodations is unallowable except when less-than-first-class air accommodations are not reasonably available.

C. Costs Allowable With Approval of Grantor Agency

1. *Automatic data processing.* The cost of data processing services to grant programs is allowable. This cost may include rental of equipment or depreciation on grantee-owned equipment. The acquisition of equipment, whether by outright purchase, rental-purchase agreement or other method of purchase, is allowable only upon specific prior approval of the grantor Federal agency as provided under the selected item for capital expenditures.

2. *Building space and related facilities.* The cost of space in privately or publicly owned buildings used for the benefit of the grant program is allowable subject to the conditions stated below. The total cost of space, whether in a privately or publicly owned building, may not exceed the rental cost of comparable space and facilities in a privately owned building in the same locality. The cost of space procured for grant program usage may not be charged to the program for periods of nonoccupancy, without authorization of the grantor Federal agency.

a. *Rental cost.* The rental cost of space in a privately owned building is allowable.

b. *Maintenance and operation.* The costs of utilities, insurance, security, janitorial services, elevator service, upkeep of grounds, normal repairs, and alterations and the like, are allowable to the extent they are not otherwise included in rental or other charges for space.

c. *Rearrangements and alterations.* Cost incurred for rearrangement and alteration of facilities required specifically for the grant program or those that materially increase the value or useful life of the facilities (section C.3.) are allowable when specifically approved by the grantor agency.

d. *Depreciation and use allowances on publicly owned buildings.* These costs are allowable as provided in section B.11.

e. *Occupancy of space under rental-purchase or a lease with option-to-purchase agreement.* The cost of space procured under such arragngements is allowable when specifically approved by the Federal grantor agency.

3. *Capital expenditures.* The cost of facilities, equipment, other capital assets, and repairs which materially increase the value or useful life of capital assets is allowable when such procurement is specifically approved by the Federal grantor agency. When assets acquired with Federal grant funds are (a) sold, (b) no longer available for use in a federally sponsored program, or (c) used for purposes not authorized by the grantor agency, the Federal grantor agency's equity in the asset will be refunded in the same proportion as Federal participation in its cost. In case any assets are traded on new items, only the net cost of the newly acquired assets is allowable.

4. *Insurance and indemnification.* a. Cost of insurance required, or approved and maintained pursuant to the grant agreement, is allowable.

b. Cost of other insurance in connection with the general conduct of activities is allowable subject to the following limitations:

(1) Types and extent and cost of coverage will be in accordance with general State or local government policy and sound business practice.

(2) Costs of insurance or of contributions to any reserve covering the risk of loss of, or damage to, Federal Government property are unallowable except to the extent that the grantor agency has specifically required or approved such costs.

c. Contributions to a reserve for a self-insurance program approved by the Federal grantor agency are allowable to the extent that the type of coverage, extent of coverage, and the rates and premiums would have been allowed had insurance been purchased to cover the risks.

d. Actual losses which could have been covered by permissible insurance (through an approved self-insurance program or otherwise) are unallowable unless expressly provided for in the grant agreement. However, costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound management practice, and minor losses not covered by insurance, such as spoilage, breakage and disappearance of small hand tools which occur in the ordinary course of operations, are allowable.

e. *Indemnification* includes securing the grantee against liabilities to third persons and other losses not compensated by insurance or otherwise. The Government is obligated to indemnify the grantee only to the extent expressly provided for in the grant agreement, except as provided in d above.

5. *Management studies.* The cost of management studies to improve the effectiveness and efficiency of grant management for ongoing programs is allowable except that the cost of studies performed by agencies other than the grantee department or outside consultants is allowable only when authorized by the Federal grantor agency.

6. *Preagreement costs.* Costs incurred prior to the effective date of the grant or contract, whether or not they would have been allowable thereunder if incurred after such date, are allowable when specifically provided for in the grant agreement.

7. *Professional services.* Cost of professional services rendered by individuals or organizations not a part of the grantee department is allowable subject to such prior authorization as may be required by the Federal grantor agency.

8. *Proposal costs.* Costs of preparing proposals on potential Federal Government grant agreements are allowable when specifically provided for in the grant agreement.

D. Unallowable Costs

1. *Bad debts.* Any losses arising from uncollectible accounts and other claims, and related costs, are unallowable.

2. *Contingencies.* Contributions to a contingency reserve or any similar provision for unforeseen events are unallowable.

3. *Contributions and donations.* Unallowable.

4. *Entertainment.* Costs of amusements, social activities, and incidental costs relating thereto, such as meals, beverages, lodgings, rentals, transportation, and gratuities, are unallowable.

5. *Fines and penalties.* Costs resulting from violations of, or failure to comply with, Federal, State, and local laws and regulations are unallowable.

6. *Governor's expenses.* The salaries and expenses of the office of the Governor of a State or the chief executive of a political subdivision are considered a cost of general State or local government and are unallowable.

7. *Interest and other financial costs.* Interest on borrowings (however represented), bond discounts, cost of financing and refinancing operations, and legal and professional fees paid in connection therewith, are unallowable except when authorized by Federal legislation.

8. *Legislative expenses.* Salaries and other expenses of the State legislature or similar local governmental bodies such as county supervisors, city councils, school boards, etc., whether incurred for purposes of legislation or executive direction, are unallowable.

9. *Underrecovery of costs under grant agreements.* Any excess of cost over the Federal contribution under one grant agreement is unallowable under other grant agreements.

Appendix D

Part I—Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts With Educational Institutions

A. Purpose and Scope

1. *Objectives.* This appendix provides principles for determining the costs applicable to research and development work performed by educational institutions under grants from and contracts with the Federal Government. These principles are confined to the subject of cost determination and make no attempt to identify the circumstances or dictate the extent of agency and institutional participation in the financing of a particular research or development project. The principles are designed to provide recognition of the full allocated costs of such research work under generally accepted accounting principles. No provision for profit or other increment above cost is intended.

2. *Policy guides.* The successful application of these principles requires development of mutual understanding between representatives of universities and of the Federal Government as to their scope, implementation, and interpretation. It is recognized that—

a. The arrangements for agency and institutional participation in the financing of a research and development project are properly subject to negotiation between the agency and the institution concerned in accordance with such Government-wide criteria as may be applicable.

b. Each college and university, possessing its own unique combination of staff, facilities, and experience, should be encouraged to conduct research in a manner consonant with its own academic philosophies and institutional objectives.

c. Each institution, in the fulfillment of its obligations, should employ sound management practices.

d. The application of the principles established herein should require no significant changes in the generally accepted accounting practices of colleges and universities and standards herein provided on a consistent basis. Where wide variations exist in the treatment of a given cost item among institutions, the reasonableness and equitableness of such treatments will be fully considered during the rate negotiations and audit.

3. *Application.* The Department of Health, Education, and Welfare, will apply these principles and related policy guides in determining the costs incurred for such work under any type of research and development agreement. These principles should also be used as a guide in the pricing of fixed-price contracts or lump sum agreements.

B. Definition of Terms

1. *Organized research* means all research activities of an institution that are separately budgeted and accounted for.

2. *Departmental research* means research activities that are not separately budgeted and accounted for. Such research work, which includes all research activities not encompassed under the term "organized research," is regarded for purposes of this document as a part of the instructional activities of the institution.

3. *Research agreement* means any valid arrangement to perform federally sponsored research, including grants, cost-reimbursement type contracts, cost-reimbursement type subcontracts, and fixed-price contracts and subcontracts for research.

4. *Other institutional activities* means all organized activities of an institution not directly related to the instruction and research functions, such as residence halls, dining halls, student hospitals, student unions, intercollegiate athletics, bookstores, faculty housing, student apartments, guest houses, chapels, theaters, public museums, and other similar activities or auxiliary enterprises. Also included under this definition is any other category of cost treated as "unallowable," provided such category of cost identifies a function or activity to which a portion of the institution's indirect costs (as defined in section E.1.) are properly allocable.

5. *Apportionment* means the process by which the indirect costs of the institution are assigned as between (a) instruction and research, and (b) other institutional activities.

6. *Allocation* means the process by which the indirect costs apportioned to instruction and research are assigned as between (a) organized research, and (b) instruction, including departmental research.

7. *Stipulated salary support* is a fixed or a stated dollar amount of the salary of professorial or other professional staff involved in the conduct of research which a Government agency agrees in advance to reimburse an educational institution as a part of sponsored research costs.

8. *Federal agency* or sponsoring agency means the Department of Health, Education and Welfare.

C. Basic Considerations

1. *Composition of total costs.* The cost of a research agreement is comprised of the allowable direct costs incident to its performance, plus the allocable portion of the allowable indirect costs of the institution, less applicable credits as described in section C.5.

2. *Factors affecting allowability of costs.* The tests of allowability of costs under these principles are: (a) they must be reasonable; (b) they must be allocable to research agreements under the standards and methods provided herein; (c) they must be accorded consistent treatment through application of those generally accepted accounting

principles appropriate to the circumstances; and (d) they must conform to any limitations or exclusions set forth in these principles or in the research agreement as to types or amounts of cost items.

3. *Reasonable costs.* A cost may be considered reasonable if the nature of the goods or services acquired or applied, and the amount involved therefor, reflect the action that a prudent person would have taken under the circumstances prevailing at the time the decision to incur the cost was made. Major considerations involved in the determination of the reasonableness of a cost are: (a) whether or not the cost is of a type generally recognized as necessary for the operation of the institution or the performance of the research agreement; (b) the restraints or requirements imposed by such factors as arm's-length bargaining, Federal and State laws and regulations, and research agreement terms and conditions; (c) whether or not the individuals concerned acted with due prudence in the circumstances, considering their responsibilities to the institution, its employees, its students, the Government, and the public at large; and (d) the extent to which the actions taken with respect to the incurrence of the cost are consistent with established institutional policies and practices applicable to the work of the institution generally, including Government research.

4. *Allocable costs.* a. A cost is allocable to a particular cost objective (i.e., a specific function, project, research agreement, department, or the like) if the goods or services involved are chargeable or assignable to such cost objective in accordance with relative benefits received or other equitable relationship. Subject to the foregoing, a cost is allocable to a research agreement if it is incurred solely to advance the work under the research agreement; or it benefits both the research agreement and other work of the institution in proportions that can be approximated through use of reasonable methods; or it is necessary to the overall operation of the institution and, in the light of the standards provided in this appendix is deemed to be assignable in part to organized research. Where the purchase of equipment or other capital items is specifically authorized under a research agreement, the amounts thus authorized for such purchases are allocable to the research agreement regardless of the use that may subsequently be made of the equipment or other capital items involved.

b. Any costs allocable to a particular research agreement under the standards provided in this appendix may not be shifted to other research agreements in order to meet deficiencies caused by overruns or other fund considerations, to avoid restrictions imposed by law or by terms of the research agreement, or for other reasons of convenience.

5. *Applicable credits.* a. The term applicable credits refers to those receipt or negative expenditure types of transactions which operate to offset or reduce expense items that are allocable to research agreements as direct or indirect costs. Typical examples of such transactions are: purchase discounts, rebates, or allowances; recoveries or indemnities on losses; sales of scrap or incidental services; and adjustments of overpayments or erroneous charges.

b. In some instances, the amounts received from the Federal Government to finance institutional activities or service operations should be treated as applicable credits. Specifically, the concept of netting such credit items against related expenditures should be applied by the institution in determining the rates or amounts to be charged to Government research for services rendered whenever the facilities or other resources used in providing such services have been financed directly, in whole or in part, by Federal funds. (See sections F.6., J.10.b., and J.37. for areas of potential application in the matter of direct Federal financing.)

6. *Costs incurred by State and local governments.* Costs incurred or paid by State or local governments in behalf of educational institutions for certain personnel benefit programs such as pension plans, FICA, and any other costs specifically disbursed in behalf of and in direct benefit to the institutions, are allowable costs of such institutions whether or not these costs are recorded in the accounting records of such institutions, subject to the following:

a. Such costs meet the requirements of sections C.1. through C.5.

b. Such costs are properly supported by cost allocation plans in accordance with Appendix C to this part.

c. Such costs are not otherwise borne directly or indirectly by the Federal Government.

D. Direct Costs

1. *General.* Direct costs are those costs which can be identified specifically with a particular research project, an instructional activity or any other institutional activity or which can be directly assigned to such activities relatively easily with a high degree of accuracy.

2. *Application to research agreements.* Identifiable benefit to the research work rather than the nature of the goods and services involved is the determining factor in distinguishing direct from indirect costs of research agreements. Typical transactions chargeable to a research agreement as direct costs are the compensation of employees for performance of work under the research agreement, including related staff benefit and pension plan costs to the extent that such items are consistently treated by the educational institution as direct rather than indirect costs; the costs of materials consumed or expended in the performance of such work; and other items of expense incurred for the research agreement, including extraordinary utility consumption. The cost of materials supplied from stock or services rendered by specialized facilities or other institutional service operations may be included as direct costs of research agreements provided such items are consistently treated by the institution as direct rather than indirect costs and are charged under a recognized method of costing or pricing designed to recover only actual costs and conforming to generally accepted cost accounting practices consistently followed by the institution.

E. Indirect Costs

1. *General.* Indirect costs are those that have been incurred for common or joint objectives and therefore cannot be identified specifically with a particular research project, an instructional activity or any other institutional activity. At educational institutions such costs normally are classified under the following functional categories: general administration and general expenses; research administration expenses; operation and maintenance expenses; library expenses; and departmental administration expenses.

2. *Criteria for distribution—a. Base period.* A base period for distribution of indirect costs is the period during which such costs are incurred and accumulated for distribution to work performed within that period. The base period normally should coincide with the fiscal year established by the institution, but in any event the base period should be so selected as to avoid inequities in the distribution of costs.

b. *Need for cost groupings.* The overall objective of the allocation and apportionment process is to distribute the indirect costs described in section F to organized research, instruction, and other activities in reasonable proportions consistent with the nature and extent of the use of the institution's resources by research personnel, academic staff, students, and other personnel or organizations. In order to achieve this objective, it may be necessary to provide for selective distribution by establishing separate groupings of cost within one or more of the functional categories of indirect costs referred to in section E.1. In general, the cost groupings established within a functional category should constitute, in each case, a pool of those items of expense that are considered to be of like character in terms of their relative contribution to (or degree of remoteness from) the particular cost objectives to which distribution is appropriate. Cost groupings should be established considering the general guides provided in c. below. Each such pool or cost grouping should then be distributed individually to the appertaining cost objectives, using the distribution base or method most appropriate in the light of the guides set out in d. below.

c. *General considerations on cost groupings.* The extent to which separate cost groupings and selective distribution would be appropriate at an institution is a matter of judgment to be determined on a case-by-case basis. Typical situations which may warrant the establishment of two or more separate cost groups (based on account classification or analysis) within a functional category include but are not limited to the following:

(1) Where certain items or categories of expense relate solely to one of the three major divisions of the institution (instruction, organized research or other institutional activities) or to any two but not the third, such expenses should be set aside as a separate cost grouping for direct assignment or selective distribution in accordance with the guides provided in b. above and d. below.

(2) Where any types of expense ordinarily treated as general administration and general expenses or departmental administration expenses are charged to research agreements

as direct costs, the similar type expenses applicable to other activities of the institution must, through separate cost groupings, be excluded from the indirect costs allocable to those research agreements and included in the direct cost of other activities for cost allocation purposes.

(3) Where it is determined that certain expenses are for the support of a service unit or facility whose output is susceptible of measurement on a workload or other quantitative basis, such expenses should be set aside as a separate cost grouping for distribution on such basis to organized research and other activities at the institution or within the department.

(4) Where organized activities (including identifiable segments of organized research as well as the activities cited in section B.4.) provide their own purchasing, personnel administration, building maintenance or similar service, the distribution of general administration and general expenses or operation and maintenance expenses to such activities should be accomplished through cost groupings which include only that portion of central indirect costs (such as for overall management) which are properly allocable to such activities.

(5) Where the institution elects to treat as indirect charges the cost of the pension plan and other staff benefits, such costs should be set aside as a separate cost grouping for selective distribution to appertaining cost objectives, including organized research.

(6) The number of separate cost groupings within a functional category should be held within practical limits, after taking into consideration the materiality of the amounts involved and the degree of precision attainable through less selective methods of distribution.

d. *Selection of distribution method.* (1) Actual conditions must be taken into account in selecting the method or base to be used in distributing to applicable cost objectives the expenses assembled under each of the individual cost groupings established as indicated under b. above. Where a distribution can be made by assignment of a cost grouping directly to the area benefited, the distribution should be made in that manner. Where the expenses under a cost grouping are more general in nature, the distribution to appertaining cost objectives should be made through use of a selected base which will produce results that are equitable to both the Government and the institution. In general, any cost element or cost-related factor associated with the institution's work is potentially adaptable for use as a distribution base provided (a) it can readily be expressed in terms of dollars or other quantitative measure (total direct expenditures, direct salaries, man-hours applied, square feet utilized, hours of usage, number of documents processed, population served, and the like); and (b) it is common to the appertaining cost objectives during the base period.

(2) Results of cost analysis studies may be used when they result in more accurate and equitable distribution of costs. Such cost analysis studies may take into consideration weighting factors, population, or space occupied if they produce equitable results. Cost analysis studies, however, should (a) be appropriately documented in sufficient detail for subsequent review by the cognizant Federal agency, (b) distribute the indirect costs to the appertaining cost objectives in accord with the relative benefits derived, (c) be conducted to fairly reflect the true conditions of the activity and to cover representative transactions for a reasonable period of time, (d) be performed specifically at the institution at which the results are to be used, and (e) be updated periodically and used consistently. Any assumptions made in the study will be sufficiently supported. The use of cost analysis studies and periodic changes in the method of cost distribution must be fully justified.

(3) The essential consideration in selection of the distribution base in each instance is that it be the one best suited for assigning the pool of costs to appertaining cost objectives in accord with the relative benefits derived; the traceable cause and effect relationship; or logic and reason, where neither benefit nor cause and effect relationship is determinable.

3. *Administration of limitations on allowances for research costs.* Research agreements may be subject to statutory or administrative policies that limit the allowance of research costs. When the maximum amount allowable under a statutory limitation or the terms of a research agreement is less than the amount otherwise reimbursable under this Appendix, the amount not recoverable under that research agreement may not be charged to other research agreements.

F. Identification and Assignment of Indirect Costs

1. *General administration and general expenses.* a. The expenses under this heading are those that have been incurred for the general executive and administrative offices of educational institutions and other expenses of a general character which do not relate solely to any major division of the institution; i.e., solely to (1) instruction, (2) organized research, or (3) other institutional activities. The general administration and general expense category should also include the staff benefit and pension plan costs applicable to the salaries and wages included therein, an appropriate share of the costs of the operation and maintenance of the physical plant, and charges representing use allowances and/or depreciation applicable to the buildings and equipment utilized in performing the functions represented thereunder.

b. The expenses included in this category may be apportioned and allocated on the basis of total expenditures exclusive of capital expenditures in situations where the results of the distribution made on this basis are deemed to be equitable both to the Government and the institution; otherwise the distribution of general administration and general expenses should be made through use of selected bases applied to separate cost groupings established within this category of expenses in accordance with the guides set out in section E.2.d.

2. *Research administration expenses.* a. The expenses under this heading are those that have been incurred by a separate organization or identifiable administrative unit established solely to administer the research activity, including such functions as contract administration, security, purchasing, personnel administration, and editing and publishing of research reports. They include the salaries and expenses of the head of such research organization, his assistants, and their immediate secretarial staff together with the salaries and expenses of personnel engaged in supporting activities maintained by the research organization, such as stock rooms, stenographic pools, and the like. The salaries of members of the professional staff whose appointments or assignments involve the performance of such administrative work may also be included to the extent that the portion so charged to research administration is supported as required by section J.7. The research administration expense category should also include the staff benefit and pension plan costs applicable to the salaries and wages included therein, an appropriate share of the costs of the operation and maintenance of the physical plant, and charges representing use allowance and/or depreciation applicable to the buildings and equipment utilized in performing the functions represented thereunder.

b. The expenses included in this category should be allocated to organized research and, where necessary, to departmental research or to any other benefiting activities on any basis reflecting the proportion fairly applicable to each. (See section E.2.d.)

3. *Operation and maintenance expenses.* a. The expenses under this heading are those that have been incurred by a central service organization or at the departmental level for the administration, supervision, operation, maintenance, preservation, and protection of the institution's physical plant. They include expenses normally incurred for such items as janitorial and utility services; repairs and ordinary or normal alterations of buildings, furniture and equipment; and care of grounds and maintenance and operation of buildings and other plant facilities. The operation and maintenance expense category should also include the staff benefit and pension plan costs applicable to the salaries and wages included therein, and charges representing use allowance and/or depreciation applicable to the buildings and equipment utilized in performing the functions represented thereunder.

b. The expenses included in this category should be apportioned and allocated to applicable cost objectives in a manner consistent with the guides provided in section E.2. on a basis that gives primary emphasis to space utilization. The allocations and apportionments should be developed as follows: (1) where actual space and related cost records are available or can readily be developed and maintained without significant change in the accounting practices, the amount distributed should be based on such records; (2) where the space and related cost records maintained are not sufficient for purposes of the foregoing, a reasonable estimate of the proportion of total space assigned to the various cost objectives normally will suffice as a means for effecting distribution of the amounts of operation and maintenance expenses involved; or (3) where

it can be demonstrated that an area or volume of space basis of allocation is impractical or inequitable, other bases may be used provided consideration is given to the use of facilities by research personnel and others, including students.

4. *Library expenses.* a. The expenses under this heading are those that have been incurred for the operation of the library, including the costs of books and library materials purchased for the library, less any items of library income that qualify as applicable credits under section C.5. The library expense category should also include the staff benefit and pension plan costs applicable to the salaries and wages included therein, an appropriate share of the costs of the operation and maintenance of the physical plant, and charges representing the allowances and/or depreciation applicable to the buildings and equipment utilized in the performance of the functions represented thereunder. Costs incurred in the purchases of rare books (museum-type books) with no research value should not be allocated to Government-sponsored research.

b. The expenses included in this category should be allocated on the basis of population including students and other users. Where the results of the distribution made on this basis are deemed to be inequitable to the Government or the institution, the distribution should then be made on a selective basis in accordance with the guides set out in section E.2. Such selective distribution should be made through use of reasonable methods which give adequate recognition to the utilization of the library attributable to faculty, research personnel, students and others. The method used will be based on data developed periodically on the respective institution's experience for representative periods.

5. *Departmental administration expenses.* a. The expenses under this heading are those that have been incurred in academic deans' offices, academic departments and organized research units such as institutes, study centers and research centers for administrative and supporting services which benefit common or joint departmental activities or objectives. They include the salaries, and expenses of deans or heads, or associate deans or heads, of colleges, schools, departments, divisions, or organized research units, and their administrative staffs together with the salaries and expenses of personnel engaged in supporting activities maintained by the department, such as stockrooms, stenographic pools, and the like, provided such supporting services cannot be directly identified with a specific research project, with an instructional activity or with any other institutional activity. The salaries of other members of the professional staff whose appointments or assignments involve the performance of such administrative work may also be included to the extent that the portion so charged to departmental administration expenses is supported as required by section J.7. The departmental administration expense category should also include the staff benefit and pension plan costs applicable to the salaries and wages included therein, an appropriate share of the costs of the operation and maintenance of the physical plant, and charges representing use allowances and/or depreciation applicable to the buildings and equipment utilized in performing the functions represented thereunder.

b. The distribution of departmental administration expenses should be made through use of selected bases applied to cost groupings established within this category of expenses in accordance with the guides set out in section E.2.d.

6. *Setoff for indirect expenses otherwise provided for by the Government.* a. The items to be accumulated under this heading are the reimbursements and other receipts from the Federal Government which are used by the institution to support directly, in whole or in part, any of the administrative or service (indirect) activities described in the foregoing (sections F.1. through F.5.). They include any amounts thus applied to such activities which may have been received pursuant to an institutional base grant or any similar contractual arrangement with the Federal Government other than a research agreement as herein defined (section B.3).

b. The sum of the items in this group shall be treated as a credit to the total indirect cost pool before it is apportioned to organized research and to other activities. Such setoff shall be made prior to the determination of the indirect cost rate or rates as provided in section G.

G. Determination and Application of Indirect Cost Rate or Rates

1. *Indirect cost pools.* a. Subject to b, below, indirect costs allocated to organized research should be treated as a common pool, and the costs in such common pool should then be distributed to individual research agreements benefiting therefrom on a single rate basis.

b. In some instances a single rate basis for use across the board on all Government research at an institution may not be appropriate, since it would not take into account those different environmental factors which may affect substantially the indirect costs applicable to a particular segment of Government research at the institution. For this purpose, a particular segment of Government research may be that performed under a single research agreement or it may consist of research under a group of research agreements performed in a common environment. The environmental factors are not limited to the physical location of the work. Other important factors are the level of the administrative support required, the nature of the facilities or other resources employed, the scientific disciplines or technical skills involved, the organizational arrangements used, or any combination thereof. Where a particular segment of Government research is performed within an environment which appears to generate a significantly different level of indirect costs, provision should be made for a separate indirect cost pool applicable to such work. The separate indirect cost pool should be developed during the course of the regular distribution process, and the separate indirect cost rate resulting therefrom should be utilized provided it is determined that (1) such indirect cost rate differs significantly from that which would have obtained under a. above, and (2) the volume of research work to which such rate would apply is material in relation to other Government research at the institution.

2. *The distribution base.* Indirect costs allocated to organized research should be distributed to applicable research agreements on the basis of direct salaries and wages. For this purpose, an indirect cost rate should be determined for each of the separate indirect cost pools developed pursuant to section G.1. The rate in each case should be stated as the percentage which the amount of the particular indirect cost pool is of the total direct salaries and wages of all research agreements identified with such pool. For the purpose of establishing an indirect cost rate, direct salaries and wages may include that portion contributed to the research by the institution for cost sharing or other purposes. Bases other than salaries and wages may be used provided it can be demonstrated that they produce more equitable results.

3. *Negotiated lump sum for indirect costs.* A negotiated fixed amount in lieu of indirect costs may be appropriate for self-contained, off-campus, or primarily subcontracted research activities where the benefits derived from an institution's indirect services cannot be readily determined. Such amount negotiated in lieu of indirect costs will be treated as an offset to total indirect expenses before apportionment to instruction, organized research, and other institutional activities. The base on which such remaining expenses are allocated should be approximately adjusted.

4. *Predetermined fixed rates for indirect costs.* Public Law 87–638 (76 Stat. 437) authorizes the use of predetermined fixed rates in determining the indirect costs applicable under research agreements with educational institutions. The stated objectives of the law are to simplify the administration of cost-type research and development contracts (including grants) with educational institutions, to facilitate the preparation of their budgets, and to permit more expeditious closeout of such contracts when the work is completed. In view of the potential advantages offered by this procedure, consideration should be given to the negotiation of predetermined fixed rates for indirect costs in those situations where the cost experience and other pertinent facts available are deemed sufficient to enable the parties involved to reach an informed judgment as to the probable level of indirect costs during the ensuing accounting period.

5. *Negotiated fixed rates and carryforward provisions.* When a fixed rate is negotiated in advance for a fiscal year (or other time period), the over- or under-recovery for that year may be included as an adjustment to the indirect cost for the next rate negotiation. When the rate is negotiated before the carryforward adjustment is determined due to the delay in audit, the carryforward may be applied to the next subsequent rate negotiation. When such adjustments are to be made, each fixed rate negotiated in advance for a given period will be computed by applying the expected indirect costs allocable to Government research for the forecast period plus or minus the carryforward

adjustment (over- or under-recovery) from the prior period, to the forecast distribution base. Unrecovered amounts under lump-sum agreements or cost-sharing provisions of prior years shall not be carried forward for consideration in the new rate negotiation. There must, however, be an advance understanding in each case between the institution and the cognizant Federal agency as to whether these differences will be considered in the rate negotiation rather than making the determination after the differences are known. Further, institutions electing to use this carryforward provision may not subsequently change without prior approval of the cognizant Federal agency. In the event that an institution returns to a postdetermined rate, any over- or under-recovery during the period in which negotiated fixed rates and carryforward provisions were followed will be included in the subsequent postdetermined rates. Where multiple rates are used, the same procedure will be applicable for determining each rate. This procedure also applies to rates established for grants and contracts for training and other educational services, but does not apply to cost-type research agreements covering work performed in wholly or partially Government-owned facilities.

H. Simplified Method for Small Institutions

1. *General.* a. Where the total direct cost of all federally supported work under research and educational service agreements at an institution does not exceed $1 million in a fiscal year (excluding direct payments by the institution to participants under educational service agreements for stipends, support, and similar costs requiring little, if any, indirect cost support), the use of the abbreviated procedure described in 2., below, may be used in determining allowable indirect costs. Under this abbreviated procedure, the institution's most recent annual financial report and immediately available supporting information, with salaries and wages segregated from other costs, will be utilized as a basis for determining the indirect cost rate applicable both to federally supported research and educational service agreements.

b. The rigid formula approach provided under this abbreviated procedure should not be used where it produces results which appear inequitable to the Government or the institution. In any such case, indirect costs should be determined through use of the regular procedure.

2. *Abbreviated procedure.* a. Establish the total amount of salaries and wages paid to all employees of the institution.

b. Establish an indirect cost pool consisting of the expenditures (exclusive of capital items and other costs specifically identified as unallowable) which customarily are classified under the following titles or their equivalents:

(1) General administration and general expenses (exclusive of costs of student administration and services, student aid, student activities, and scholarships).

(2) Operation and maintenance of physical plant.

(3) Library.

(4) Department administration expenses, which will be computed as 20 percent of the salaries and expenses of deans and heads of departments.

In those cases where expenditures classified under 2.b.(1) and 2.b.(2) have previously been allocated to other institutional activities, they may be included in the indirect cost pool. The total amount of salaries and wages included in the indirect cost pool must be separately identified.

c. Establish a salary and wage distribution base, determined by deducting from the total of salaries and wages as established under 2.a. the amount of salaries and wages included under 2.b.

d. Establish the indirect cost rate, determined by dividing the amount in the indirect cost pool 2.b. by the amount of the distribution base 2.c.

e. Apply the indirect cost rate established to direct salaries and wages for individual agreements to determine the amount of indirect costs allocable to such agreements.

I. [Reserved]

J. General Standards for Selected Items of Cost

Sections J.1. through J.46. provide standards to be applied in establishing the allowability of certain items involved in determining cost. These standards should apply irrespective of whether a particular item of cost is properly treated as direct cost or indirect cost. Failure to mention a particular item of cost in the standards is not intended to imply that it is either allowable or unallowable; rather determination as to allowability in each case should be based on the treatment or standards provided for similar or related items of cost. In case of discrepancy between the provisions of a specific research agreement and the applicable standards provided, the provisions of the research agreement should govern.

1. *Advertising costs.* The term advertising costs means the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television programs, direct mail, exhibits, and the like. The only advertising costs allowable are those which are solely for: (a) The recruitment of personnel required for the performance by the institution of obligations arising under the research agreement, when considered in conjunction with all other recruitment costs, as set forth in J.32; (b) the procurement of scarce items for the performance of the research agreement; or (c) the disposal of scrap or surplus materials acquired in the performance of the research agreement. Costs of this nature, if incurred for more than one research agreement or for both research agreement work and other work of the institution, are allowable to the extent that the principles in sections D and E are observed.

2. *Bad debts.* Any losses, whether actual or estimated arising from uncollectible accounts and other claims, related collections costs, and related legal costs, are unallowable.

3. *Capital expenditures.* The costs of equipment, buildings, and repairs which materially increase the value or useful life of buildings or equipment, are unallowable except as provided for in the research agreement. Government funds shall not be used for the acquisition of land, or any interest therein, except with the specific prior approval of the sponsoring agency.

4. *Civil defense costs.* Civil defense costs are those incurred in planning for, and the protection of life and property against, the possible effects of enemy attack. Reasonable costs of civil defense measures (including costs in excess of normal plant pro- tection costs, first-aid training and supplies, firefighting training, posting of additional exit notices and directions, and other approved civil defense measures) undertaken on the institution's premises pursuant to suggestions or requirements of civil defense authorities are allowable when distributed to all activities of the institution. Capital expenditures for civil defense purposes will not be allowed, but a use allowance or depreciation may be permitted in accordance with provisions set forth in section J.10. Costs of local civil defense projects not on the institution's premises are unallowable.

5. *Commencement and convocation costs.* Costs incurred for commencements and convocations apply only to instruction and therefore are not allocable to research agreements, either as direct costs or indirect costs.

6. *Communication costs.* Costs incurred for telephone services, local and long-distance telephone calls, telegrams, radiograms, postage and the like, are allowable.

7. *Compensation for personal services*—a. *General.* Compensation for personal services covers all remuneration paid currently or accured to the institution for services of employees rendered during the period of performance under Government research agreements. Such remuneration includes salaries, wages, staff benefits (see section J.39.), and pension plan costs (see section J.23.). The costs of such remuneration are allowable to the extent that the total compensation to individual employees is reasonable for the services rendered and conforms to the established policy of the institution consistently applied, and provided that the charges for work performed directly on Government research agreements and for other work allocable as indirect costs to organized research are determined and supported as hereinafter provided.

b. *Payroll distribution.* Amounts charged to organized research for personal services, except stipulated salary support, regardless of whether treated as direct costs or allocated as indirect costs, will be based on institutional payrolls which have been approved and documented in accordance with generally accepted institutional practices. Support for direct and indirect allocations of personal service costs to (1) instruction, (2) organized research, and (3) indirect activities as defined in section E.1., or (4) other institutional activities as defined in section B.4., will be provided as described in c., d., e., and f., below.

c. *Stipulated salary support.* As an alternative to payroll distribution, stipulated salary support amounts may be provided in the research agreement for professorial staff, any part of whose compensation is chargeable to Government-sponsored research. Stipulated salary support may also be provided for any other professionals who

are engaged part time in sponsored research and part time in other work. The stipulated salary support for an individual will be determined by the Government and the educational institution during the proposal and award process on the basis of considered judgment as to the monetary value of the contribution which the individual is expected to make to the research project. This judgment will take into account any cost sharing by the institution and such other factors as the extent of the investigator's planned participation in the project and his ability to perform as planned in the light of his other commitments. It will be necessary for those who review research proposals to obtain information on the total academic year salary of the faculty members involved; the other research projects or proposals for which salary is allocated; and any other duties they may have such as teaching assignments, administrative assignments, number of graduate students for which they are responsible, or other institutional activities. Stipulated amounts for an individual must not per se result in increasing his official salary from the institution.

d. *Direct charges for personal services under payroll distribution.* The direct cost charged to organized research for the personal services of professorial and professional staff, exclusive of those whose salaries are stipulated in the research agreement, will be based on institutional payroll systems. Such institutional payroll systems must be supported by either: (1) an adequate appointment and workload distribution system accompanied by monthly reviews performed by responsible officials and a reporting of any significant changes in workload distribution of each professor or professional staff member, or (2) a monthly after-the-fact certification system which will require the individual investigators, deans, departmental chairmen or supervisors having first-hand knowledge of the services performed on each research agreement to report the distribution of effort. Reported changes will be incorporated during the accounting period into the payroll distribution system and into the accounting records. Direct charges for salaries and wages of nonprofessionals will be supported by time and attendance and payroll distribution records.

e. *Direct charges for personal services under stipulated salaries.* The amounts stipulated for salary support will be treated as direct costs. The stipulated salary for the academic year will be prorated equally over the duration of the grant or contract period during the academic year, unless other arrangements have been made in the grant or contract instrument. No time or effort reporting will be required to support these amounts. Special provision for summer salaries, or for a particular "off period" if other than summer, will be required. The research agreements will state that any research covered by summer salary support must be carried out during the summer, not during the academic year, and at locations approved in advance in writing by the granting agency. The certification required in section K will attest to this requirement as well as all others in a given research agreement. Stipulated salary support remains fixed during the funding period of the grant or contract and will be costed at the rate described above unless there is a significant change in performance. For example, a significant change in performance would exist if the faculty member (1) was ill for an extended period, (2) took sabbatical leave to devote effort to duties unrelated to his research, or (3) was required to increase substantially his teaching assignments, administrative duties, or responsibility for more research projects. In the latter event, it will be the responsibility of the educational institution to reduce the charges to the research agreement proportionately or seek an appropriate amendment. In the case of those covered by stipulated salary support, the auditors are no longer required to review the precise accuracy of time or effort devoted to research projects. Rather, their reviews should include steps to determine on a sample basis that an institution is not reimbursed for more than 100 percent of each faculty member's salary and that the portion of each faculty member's salary charged to Government-sponsored research is reasonable in view of his university workload and other commitments. The stipulated salary method may also be agreed upon for that portion of a professional's salary that represents cost sharing by the institution.

f. *Indirect personal services costs.* Allowable indirect personal services costs will be supported by the educational institution's accounting system maintained in accordance with generally accepted institutional practices. Where a comprehensive accounting system does not exist, the institution should make periodic surveys no less frequently than annually to support the indirect personal services costs for inclusion in the overhead pool. Such supporting documentation must be retained for subsequent review by Government officials.

g. *General guidance for charging personal services.* Budget estimates on a monthly, quarterly, semester, or yearly basis do not qualify as support for charges to federally sponsored research projects and should not be used unless confirmed after the fact. Charges to research agreements may include reasonable amounts for activities contributing and intimately related to work under the agreement, such as preparing and delivering special lectures about specific aspects of the ongoing research, writing research reports and articles, participating in appropriate research seminars, consulting with colleagues and graduate students with respect to related research, and attending appropriate scientific meetings and conferences. In no case should charges be made to federally sponsored research projects for lecturing or preparing for formal courses listed in the catalog and offered for degree credit, or for committee or administrative work related to university business.

h. *Nonuniversity professional activities.* A university must not alter or waive university-wide policies and practices dealing with the permissible extent of professional services over and above those traditionally performed without extra university compensation, unless such arrangements are specifically authorized by the sponsoring agency. Where univesity-wide policies do not adequately define the permissible extent of consultantship or other nonuniversity activities undertaken for extra pay, the Government may require that the effort of professional staff working under research agreements be allocated as between (1) university activities, and (2) nonuniversity professional activities. If the sponsoring agency should consider the extent of nonuniversity professional effort excessive, appropriate arrangements governing compensation will be negotiated on a case-by-case basis.

i. *Salary rates for academic year.* Charges for work performed on Government research by faculty members during the academic year will be based on the individual faculty member's regular compensation for the continuous period which, under the practice of the institution concerned, constitutes the basis of his salary. Charges for work performed on research agreements during all or any portion of such period would be allowable at the base salary rate. In no event will the charge to research agreements, irrespective of the basis of computation, exceed the proportionate share of the base salary for that period, and any extra compensation above the base salary for work on Government research during such period would be unallowable. This principle applies to all members of the faculty at an institution. Since intrauniversity consulting is assumed to be undertaken as a university obligation requiring no compensation in addition to full-time base salary, the principle also applies to those who function as consultants or otherwise contribute to a research agreement conducted by another faculty member of the same institution. However, in unusual cases where consultation is across departmental lines or involves a separate or remote operation, and the work performed by the consultant is in addition to his regular departmental load, any charges for such work representing extra compensation above the base salary are allowable provided such consulting arrangement is specifically provided for in the research agreement or approved in writing by the sponsoring agency.

j. *Salary rates for periods outside the academic year.* Charges for work performed by faculty members on Government research during the summer months or other periods not included in the base salary period will be determined for each faculty member at a monthly rate not in excess of that which would be applicable under his base salary and will be limited to charges made in accordance with other subsections of J.7.

k. *Salary rates for part-time faculty.* Charges for work performed on Government research by a faculty member having only part-time appointment for teaching will be determined at a rate not in excess of that for which he is regularly paid for his part-time teaching assignments. Example: An institution pays $5,000 to a faculty member for half-time teaching during the academic year. He devoted one-half of his remaining time (25 percent of his total available time) to Government research. Thus his additional

compensation, chargeable by the institution to Government research agreements, would be one-half of $5,000 or $2,500.

8. *Contingency provisions.* Contributions to a contingency reserve or any similar provision made for events the occurrence of which cannot be foretold with certainty as to time, intensity, or with an assurance of their happening, are unallowable.

9. *Deans of faculty and graduate schools.* The salaries and expenses of deans of faculty and graduate schools, or their equivalents, and their staffs, are allowable.

10. *Depreciation and use allowances.* a. Institutions may be compensated for the use of buildings, capital improvements, and usable equipment on hand through use allowances or depreciation. Use allowances are the means of providing such compensation when depreciation or other equivalent costs are not considered. However, a combination of the two methods may not be used in connection with a single class of fixed assets.

b. Due consideration will be given to Government-furnished facilities utilized by the institution when computing use allowances and/or depreciation if the Government-furnished facilities are material in amount. Computation of the use allowance and/or depreciation will exclude both the cost or any portion of the cost of buildings and equipment borne by or donated by the Federal Government, irrespective of where title was originally vested or where it presently resides and, secondly, the cost of grounds. Capital expenditures for land improvements (paved areas, fences, streets, sidewalks, utility conduits, and similar improvements not already included in the cost of buildings) are allowable provided the systematic amortization of such capital expenditures has been provided, based on reasonable determinations of the probable useful lives of the individual items involved, and the share allocated to organized research is developed from the amount thus amortized for the base period involved. Amortization methods once used should not be changed for a given building or equipment unless approved in advance by the cognizant Federal agency.

c. Where the use allowance method is followed, the use allowance for buildings and improvements will be computed at an annual rate not exceeding 2 percent of acquisition cost. The use allowance for equipment will be computed at an annual rate not exceeding 6⅔ percent of acquisition cost of usable and needed equipment in those cases where the institution maintains current records with respect to such equipment on hand. Where the institution's records reflect only the cost (actual or estimated) of the original complement of equipment, the use allowance will be computed at an annual rate not exceeding 10 percent of such cost. Original complement for this purpose means the complement of equipment initially placed in buildings to perform the functions currently being performed in such buildings; however, where a permanent change in the function of a building takes place, a redetermination of the original complement of equipment may be made at that time to establish a new original complement. In those cases where no equipment records are maintained, the institution will justify a reasonable estimate of the acquisition cost of usable and needed equipment which may be used to compute the use allowance at an annual rate not exceeding 6⅔ percent of such estimate.

d. Where the depreciation method is followed, adequate property record must be maintained and periodic inventory (a statistical sampling basis is acceptable) must be taken to insure that properties for which depreciation is charged do exist and are needed. The period of useful service (service life) established in each case for usable capital assets must be determined on a realistic basis which takes into consideration such factors as type of construction, nature of the equipment used, technological developments in the particular research area, and the renewal and replacement policies followed for the individual items or classes of assets involved. Where the depreciation method is introduced for application to assets acquired in prior years, the annual charges therefrom must not exceed the amounts that would have resulted had the depreciation method been in effect from the date of acquisition of such assets.

e. Where an institution elects to go to a depreciation basis for a particular class of assets, no depreciation, rental or use charge may be allowed on any such assets that, under d. above, would be viewed as fully depreciated provided, however, that reasonable use charges may be negotiated for any such assets if warranted after taking into consideration the cost of the facility or item involved, the estimated useful life remaining at time of negotiation, the actual replacement policy followed in the light of service lives used for calculating depreciation, the effect of any increased maintenance charges or decreased efficiency due to age, and any other factors pertinent to the utilization of the facility or item for the purpose contemplated.

11. *Employee morale, health, and welfare costs and credits.* The costs of house publications, health or first-aid clinics and/or infirmaries, recreational activities, employees' counseling services, and other expenses incurred in accordance with the institution's established practice or custom for the improvement of working conditions, employer-employee relations, employee morale, and employee-performance, are allowable. Such costs will be equitably apportioned to all activities of the institution. Income generated from any of these activities will be credited to the cost thereof unless such income has been irrevocably set over to employee welfare organizations.

12. *Entertainment costs.* Costs incurred for amusement, social activities, entertainment, and any items relating thereto, such as meals, lodging, rentals, transportation, and gratuities, are unallowable.

13. *Equipment and other facilities.* The costs of permanent equipment or other facilities are allowable where such purchases are approved by the sponsoring agency concerned or provided for by the terms of the research agreement. Total expenditures for permanent equipment may not exceed 125 percent of the amount allotted for the permanent equipment category by the sponsoring agency (through an approved budget or other document) except with approval. The term "permanent equipment" shall mean an item of property which has an acquisition cost of $200 or more and has an expected service life of one year or more.

a. *General purpose equipment.* Approval must be obtained to acquire with Government funds any general purpose permanent equipment, i.e., any items which are usable for activities of the institution other than research, such as office equipment and furnishings, air conditioning, reproduction, or printing equipment, motor vehicles, etc., or any automatic data processing equipment.

b. *Research equipment.* Approval must be obtained to acquire with Government funds any item of permanent research equipment costing $1,000 or more.

14. *Fines and penalties.* Costs resulting from violations of, or failure of the institution to comply with, Federal, State, and local laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of the research agreement or instructions in writing from the contracting officer.

15. *Insurance and indemnification.* a. Costs of insurance required or approved, and maintained, pursuant to the research agreement, are allowable.

b. Costs of other insurance maintained by the institution in connection with the general conduct of its activities, are allowable subject to the following limitations: (1) types and extent and cost of coverage must be in accordance with sound institutional practice; (2) costs of insurance or of any contributions to any reserve covering the risk of loss of or damage to Government-owned property are unallowable except to the extent that the Government has specifically required or approved such costs; and (3) costs of insurance on the lives of officers or trustees are unallowable except where such insurance is part of an employee plan which is not unduly restricted.

c. Contributions to a reserve for an approved self-insurance program are allowable to the extent that the types of coverage, extent of coverage, and the rates and premiums would have been allowed had insurance been purchased to cover the risks.

d. Actual losses which could have been covered by permissible insurance (through an approved self-insurance program or otherwise) are unallowable unless expressly provided for in the research agreement, except that costs incurred because of losses not covered under existing deductible clauses for insurance coverage provided in keeping with sound management practice as well as minor losses not covered by insurance, such as spoilage, breakage, and disappearance of small hand tools, which occur in the ordinary course of operations, are allowable.

e. Indemnification includes securing the institution against liabilities to third persons and other losses not compensated by insurance or otherwise. The Government is obligated to indemnify the institution only to the extent expressly provided for in the research agreement, except as provided in d. above.

16. *Interest, fund raising, and investment management costs.* a. Costs incurred for

interest on borrowed capital or temporary use of endowment funds, however represented, are unallowable.

b. Costs of organized fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions, are not allowable under Government research agreements.

c. Costs of investment counsel and staff and similar expenses incurred solely to enhance income from investments are not allowable under Government research agreements.

d. Costs related to the physical custody and control of monies and securities are allowable.

17. *Labor relations costs.* Costs incurred in maintaining satisfactory relations between the institution and its employees, including costs of labor management committees, employees' publications, and other related activities, are allowable.

18. *Losses on other research agreements or contracts.* Any excess of costs over income under any other research agreement or contract of any nature is unallowable. This includes, but is not limited to, the institution's contributed portion by reason of cost-sharing agreements or any under-recoveries through negotiation of flat amounts for indirect costs.

19. *Maintenance and repair costs.* Costs incurred for necessary maintenance, repair, or upkeep of property (including Government property unless otherwise provided for) which neither add to the permanent value of the property nor appreciably prolong its intended life but keep it in an efficient operating condition, are allowable.

20. *Material costs.* Costs incurred for purchased materials, supplies, and fabricated parts directly or indirectly related to the research agreement, are allowable. Purchases made specifically for the research agreement should be charged thereto at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received by the institution. Withdrawals from general stores or stockrooms should be charged at their cost under any recognized method of pricing stores' withdrawals conforming to sound accounting practices consistently followed by the institution. Incoming transportation charges are a proper part of material cost. Direct material cost should include only the materials and supplies actually used for the performance of the research agreement, and due credit should be given for any excess materials retained, or returned to vendors. Due credit should be given for all proceeds or value received for any scrap resulting from work under the research agreement. Where Government-donated or furnished material is used in performing the research agreement, such material will be used without charge.

21. *Memberships, subscriptions, and professional activity costs.* a. Costs of the institution's membership in civic, business, technical, and professional organizations are allowable.

b. Costs of the institution's subscriptions to civic, business, professional, and technical periodicals are allowable.

c. Costs of meetings and conferences, when the primary purpose is the dissemination of technical information, are allowable. This includes costs of meals, transportation, rental of facilities, and other items incidental to such meetings or conferences.

22. *Patent costs.* Cost of preparing disclosures, reports, and other documents required by the research agreement and of searching the art to the extent necessary to make such invention disclosures, are allowable. In accordance with the clauses of the research agreement relating to patents, costs of preparing documents and any other patent costs, in connection with the filing of a patent application where title is conveyed to the Government, are allowable. (See also section J.33.)

23. *Pension plan costs.* Costs of the institution's pension plan which are incurred in accordance with the established policies of the institution are allowable, provided such policies meet the test of reasonableness and the methods of cost allocation are not discriminatory, and provided appropriate adjustments are made for credits or gains arising out of normal and abnormal employee turnover or any other contingencies that can result in forfeitures by employees which inure to the benefit of the institution.

24. *Plant security costs.* Necessary expenses incurred to comply with Government security requirements, including wages, uniforms, and equipment of personnel engaged in plant protection, are allowable.

25. *Preresearch agreement costs.* Costs incurred prior to the effective date of the research agreement, whether or not they would have been allowable thereunder if incurred after such date, are unallowable unless specifically set forth and identified in the research agreement.

26. *Professional services costs.* a. Costs of professional services rendered by the members of a particular profession who are not employees of the institution are allowable subject to b. and c. below, when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Government. Retainer fees to be allowable must be reasonably supported by evidence of services rendered.

b. Factors to be considered in determining the allowability of costs in a particular case include (1) the past pattern of such costs, particularly in the years prior to the award of Government research agreements; (2) the impact of Government research agreements on the institution's total activity; (3) the nature and scope of managerial services expected of the institution's own organizations; and (4) whether the proportion of Government work to the institution's total activity is such as to influence the institution in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Government research agreements.

c. Costs of legal, accounting, and consulting services, and related costs, incurred in connection with organization and reorganization or the prosecution of claims against the Government, are unallowable. Costs of legal, accounting and consulting services, and related costs, incurred in connection with patent infringement litigation, are unallowable unless otherwise provided for in the research agreement.

27. *Profits and losses on disposition of plant, equipment, or other capital assets.* Profits or losses of any nature arising from the sale or exchange of plant, equipment, or other capital assets, including sale or exchange of either short- or long-term investments, shall not be considered in computing research agreement costs.

28. *Proposal costs.* Proposal costs are the costs of preparing bids or proposals on potential Government and nongovernment research agreements or projects, including the development of engineering data and cost data necessary to support the institution's bids or proposals. Proposal costs of the current accounting period of both successful and unsuccessful bids and proposals normally should be treated as indirect costs and allocated currently to all activities of the institution, and no proposal costs of past accounting periods will be allocable in the current period to the Government research agreement. However, the institution's established practices may be to treat proposal costs by some other recognized method. Regardless of the method used, the results obtained may be accepted only if found to be reasonable and equitable.

29. *Public information services costs.* Costs of news releases pertaining to specific research or scientific accomplishment are unallowable unless specifically authorized by the sponsoring agency.

30. *Rearrangement and alteration costs.* Costs incurred for ordinary or normal rearrangement and alteration of facilities are allowable. Special arrangement and alteration costs incurred specifically for the project are allowable when such work has been approved in advance by the sponsoring agency concerned.

31. *Reconversion costs.* Costs incurred in the restoration or rehabilitation of the institution's facilities to approximately the same condition existing immediately prior to commencement of Government research agreement work, fair wear and tear excepted, are allowable.

32. *Recruiting costs.* a. Subject to b., c., and d. below, and provided that the size of the staff recruited and maintained is in keeping with workload requirements, costs of "help wanted" advertising, operating costs of an employment office necessary to secure and maintain an adequate staff, costs of operating an aptitude and educational testing program, travel costs of employees while engaged in recruiting personnel, travel costs of applicants for interviews for prospective employment, and relocation costs incurred incident to recruitment of new employees, are allowable to the extent that such costs are incurred pursuant to a well-managed recruitment program. Where the institution uses employment agencies, costs not in excess of standard commercial rates for such services are allowable.

b. In publications, costs of help-wanted advertising that includes color, includes advertising material for other than recruitment purposes, or is excessive in size (taking into consideration recruitment purposes for which intended and normal institutional practices in this respect), are unallowable.

c. Costs of help-wanted advertising, special emoluments, fringe benefits, and salary

allowances incurred to attract professional personnel from other institutions that do not meet the test of reasonableness or do not conform with the established practices of the institution, are unallowable.

d. Where relocation costs incurred incident to recruitment of a new employee have been allowed either as an allocable direct or indirect cost, and the newly hired employee resigns for reasons within his control within 12 months after hire, the institution will be required to refund or credit such relocation costs to the Government.

33. *Royalties and other costs for use of patents.* Royalties on a patent or amortization of the costs of acquiring a patent or invention or rights thereto, necessary for the proper performance of the research agreement and applicable to tasks or processes thereunder, are allowable unless the Government has a license or the right to free use of the patent, the patent has been adjudicated to be invalid or has been administratively determined to be invalid, the patent is considered to be unenforceable, or the patent has expired.

34. *Sabbatical leave costs.* Costs of leave of absence to employees for performance of graduate work or sabbatical study, travel, or research, are allowable provided the institution has a uniform policy on sabbatical leave for persons engaged in instruction and persons engaged in research. Such costs will be allocated on an equitable basis among all appertaining activities of the instiutution. Where sabbatical leave is included in fringe benefits for which a cost is determined for assessment as a direct charge, the aggregate amount of such assessments applicable to all work of the institution during the base period must be reasonable in relation to the institution's actual experience under its sabbatical leave policy.

35. *Scholarships and student aid costs.* Costs of scholarships, fellowships and other forms of student aid apply only to instruction and therefore are not allocable to research agreements, either as direct costs or indirect costs. However, in the case of students actually engaged in work under research agreements, any tuition remissions to such students for work performed are allocable to such research agreements provided consistent treatment is accorded such costs. (See section J.39.)

36. *Severance pay.* a. Severance pay is compensation in addition to regular salaries and wages which is paid by an institution to employees whose services are being terminated. Costs of severance pay are allowable only to the extent that such payments are required by law, by employer-employee agreement, by established policy that constitutes in effect an implied agreement on the institution's part, or by circumstances of the particular employment.

b. Severance payments that are due to normal, recurring turnover and which otherwise meet the conditions of a. above may be allowed provided the actual costs of such severance payments are regarded as expenses applicable to the current fiscal year and are equitably distributed among the institution's activities during that period.

c. Severance payments that are due to abnormal or mass terminations are of such conjectural nature that allowability must be determined on a case-by-case basis. However, the Govermnment recognizes its obligation to participate, to the extent of its fair share, in any specific payment.

37. *Specialized service facilities operated by institution.* a. The costs, including amortization by generally accepted accounting practice, of institutional services involving the use of highly complex and specialized facilities such as electronic computers, including the cost of adapting computers for use, wind tunnels, and reactors are allowable provided the charges therefor meet the conditions of b. or c. below, and otherwise take into account any items of income or Federal financing that qualify as applicable credits under section C.5.

b. The costs of such institutional services normally will be charged directly to applicable research agreements based on actual usage or occupancy of the facilities on the basis of a schedule of rates that (1) is designed to recover only aggregate costs of providing such services over a long term agreed upon in advance by the cognizant Federal agency on an individual basis, and (2) is applied on a nondiscriminatory basis as between organized research and other work of the institution, including usage by the institution for internal purposes. Commercial or accommodation sales of computer services will be charged at not less than the above rates; however, if the rates charged for these services are greater, the total amount of charges above the scheduled rates when significant may be considered in revising the schedule of rates. Further, within the constraints of this paragraph, it is not necessary that the rates charged for services be equal to the cost of providing those services during any one fiscal year.

c. In the absence of an acceptable arrangement for direct costing as provided in b. above, the costs incurred for such institutional services may be assigned to research agreements as indirect costs, provided the methods used achieve substantially the same results. Such arrangements should be worked out in coordination with the cognizant Federal agency in order to assure equitable distribtution of the indirect costs.

38. *Special services costs.* Costs incurred for general public relations activities, catalogs, alumni activities, and similar services, are unallowable.

39. *Staff benefits.* a. Staff benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, sick leave, military leave, and the like, are allowable provided such costs are absorbed by all institutional activities, including organized research, in proportion to the relative amount of time or effort actually devoted to each. (See section J.34. for treatment of sabbatical leave.)

b. Staff benefits in the form of employer contributions or expenses for social security, employee insurance, workmen's compensation insurance, the pension plan (see section J.23.), tuition or remission of tuition for individual employees or their families (see section J.35.), and the like, are allowable provided such benefits are granted in accordance with established institutional policies, and provided such contributions and other expenses, whether treated as indirect costs or as an increment of direct labor costs, are distributed to particular research agreements and other activities in a manner consistent with the pattern of benefits accruing to the individuals or groups of employees whose salaries and wages are chargeable to such research agreements and other activities.

40. *Student activity costs.* Costs incurred for intramural activities, student publications, student clubs, and other student activities, apply only to instruction and therefore are not allocable to research agreements, either as direct costs or indirect costs.

41. *Student services costs.* Costs of the deans of students, administration of student affairs, registrar, placement offices, student advisers, student health and infirmary services, and such other activities as are identifiable with student services apply only to instruction and therefore are not allocable to research agreements, either as direct costs or indirect costs. However, in the case of students actually engaged in work under research agreements, a proportion of student services costs measured by the relationship between hours of work by students on such research work and total student hours including all research time may be allowed as a part of research administration expenses.

42. *Taxes.* a. In general, taxes which the institution is required to pay and which are paid or accrued in accordance with generally accepted accounting principles, and payments made to local governments in lieu of taxes which are commensurate with the local government services received are allowable, except for: (1) taxes from which exemptions are available to the institution directly or which are available to the institution based on an exemption afforded the Government and in the latter case when the sponsoring agency makes available the necessary exemption certificates, and (2) special assessments on land which represent capital improvements.

b. Any refund of taxes, interest, or penalties, and any payment to the institution of interest thereon, attributable to taxes, interest, or penalties which were allowed as research agreement costs, will be credited or paid to the Government in the manner directed by the Government provided any interest actually aid or credited to an institution incident to a refund of tax, interest and penalty will be paid or credited to the Government only to the extent that such interest accrued over the period during which the institution had been reimbursed by the Government for the taxes, interest, and penalties.

43. *Transportation costs.* Costs incurred for freight, express, cartage, postage, and other transportation services relating either to goods purchased, in process, or delivered, are allowable. When such costs can readily be identified with the items involved, they may be charged directly as transportation costs or added to the cost of such items. Where identification with the materials received cannot readily be made, inbound transportation costs may be charged to the appropriate indirect cost accounts if the institution follows a consistent, equitable

procedure in this respect. Outbound freight, if reimbursable under the terms of the research agreement, should be treated as a direct cost.

44. *Travel costs.* a. Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the institution. Such costs may be charged on an actual basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip and not to selected days of the trip, and results in charges consistent with those normally allowed by the institution in its regular operations.

b. Travel costs are allowable subject to c., d., e., and f. below, when they are directly attributable to specific work under a research agreement or are incurred in the normal course of administration of the institution or a department or research program thereof.

c. The difference in cost between first-class air accommodations and less than first-class air accommodations is unallowable except when less than first-class air accommodations are not reasonably available to meet necessary mission requirements, such as where less than first-class accommodations would:

(1) Require circuitous routing, (2) require travel during unreasonable hours, (3) greatly increase the duration of the flight, (4) result in additional costs which would offset the transportation savings, or (5) offer accommodations which are not reasonably adequate for the medical needs of the traveler.

d. Costs of personnel movements of a special or mass nature are allowable only when authorized or approved in writing by the sponsoring agency or its authorized representative.

e. Foreign travel costs are allowable only when the travel has received specific prior approval. Each separate foreign trip must be specifically approved. For purposes of this provision, foreign travel is defined as "any travel outside of Canada and the United States and its territories and possessions."

f. Expenditures for domestic travel may not exceed $500, or 125 percent of the amount allotted for such travel by the sponsoring agency, whichever is greater, except with approval.

45. *Termination costs applicable to research agreements.* a. Termination of research agreements generally gives rise to the incurrence of costs or to the need for special treatment of costs, which would not have arisen had the agreement not been terminated. Items peculiar to termination are set forth below. They are to be used in conjunction with all other provisions of this Appendix in the case of termination.

b. The cost of common items of material reasonably usable on the institution's other work will not be allowable unless the institution submits evidence that it could not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the institution, consideration should be given to the institution's plans and orders for current and scheduled work. Contemporaneous purchases of common items by the institution will be regarded as evidence that such items are reasonably usable on the institution's other work. Any acceptance of common items as allowable to the terminated portion of the agreement should be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirements of other work.

c. If in a particular case, despite all reasonable efforts by the institution, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in this Appendix, except that any such costs continuing after termination due to the negligent or willful failure of the institution to discontinue such costs will be considered unacceptable.

d. Loss of useful value of special tooling and special machinery and equipment is generally allowable, provided: (1) such special tooling, machinery, or equipment is not reasonably capable of use in the other work of the institution; (2) the interest of the Government is protected by transfer of title or by other means deemed appropriate by the contracting officer or equivalent; and (3) the loss of useful value as to any one terminated agreement is limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the agreement bears to the entire terminated agreement and other Government agreements for which the special tooling, special machinery, or equipment was acquired.

e. Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated agreement, less the residual value of such leases, if: (1) the amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the agreement and such further period as may be reasonable; and (2) the institution makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease. There also may be included the cost of alterations of such leased property, provided such alterations were necessary for the performance of the agreement, and of reasonable restoration required by the provisions of the lease.

f. Settlement expenses including the following are generally allowable: (1) accounting, legal, clerical, and similar costs reasonably necessary for the preparation and presentation to contracting officers or equivalent of settlement claims and supporting data with respect to the terminated portion of the agreement, and the termination and settlement of subagreements; and (2) reasonable costs for the storage, transportation, protection, and disposition of property provided by the Government or acquired or produced by the institution for the agreement.

g. Claims under subagreements, including the allocable portion of claims which are common to the agreement and to other work of the institution, are generally allowable.

K. Certification of Charges.

To assure that expenditures for research grants and contracts are proper and in accordance with the research agreement documents and approved project budgets, the annual and/or final fiscal reports or vouchers requesting payment under research agreements will include a certification, signed by an authorized official of the univesity, which reads essentially as follows: "I certify that all expenditures reported (or payments requested) are for appropriate purposes and in accordance with the agreements set forth in the application and award documents."

Part II—Principles for Determining Costs Applicable to Training and Other Educational Services Under Grants and Contracts With Educational Institutions

A. *Purpose.* This part extends the scope of Part I to cover the determination of costs incurred by educational institutions under Federal grants and contracts for training and other educational services.

B. *Application.* The Department of Health, Education, and Welfare will use Parts I and II of this Appendix as a basis for determining allowable costs under grants and cost reimbursement type contracts with educational institutions for work performed under federally supported education service agreements.

C. *Terminology.* The following definitions are to be used in determining the indirect cost of federally sponsored training and other educational services under this Part II:

1. *Educational service agreement* means any grant or contract under which Federal financing is provided on a cost reimbursement basis for all or an agreed portion of the costs incurred for training or other educational services. Typical of the work covered by educational service agreements are summer institutes, special training programs for selected participants, professional or technical services to cooperating countries, the development and introduction of new or expanded courses, and similar instructional oriented undertakings, including special research training programs, that are separately budgeted and accounted for by the institution.

The term does not extend to: (a) grants or contracts for organized research, (b) arrangements under which the Federal financing is exclusively in the form of scholarships, fellowships, traineeships, or other fixed amounts such as a cost of education allowance or the normal published tuition rates and fees of an institution, or (c) construction, facility and exclusively general resource or institutional-type grants.

2. *Instruction* means all of the academic work other than organized research carried on by an institution, including the teaching of graduate and undergraduate courses, departmental research (see section B.2. of Part I) and all special training or other instructional-oriented projects sponsored by the Federal Government or others under educational service agreements.

D. *Student administration and services.* In addition to the five major functional categories of indirect costs described in section F of Part I, there is established an additional category under the title "Student administration and services" to embrace the following:

1. The expenses in this category are those that have been incurred for the administration of student affairs and for services to students, including expenses of such activities as deans of students, admissions, registrar, counseling and placement services, student advisers, student health and infirmary services, catalogs, and commencements and convocations. The salaries of members of the academic staff whose academic appointments or assignments involve the performance of such administrative or service work may also be included to the extent that the portion so charged is supported pursuant to section J.2. of Part I. The student administration and services category also includes the staff benefit and pension plan costs applicable to the salaries and wages included therein, an appropriate share of the cost of the operation and maintenance of the physical plant, and charges representing use allowance or depreciation applicable to the buildings and equipment utilized in the performance of the functions included in this category.

2. The expenses in this category are generally applicable in their entirety to the instruction activity. They should be allocated to applicable cost objectives within the instruction activity, including educational service agreements, when such agreements reasonably benefit from these expenses. Such expenses should be allocated on the basis of population served (computed on the basis of full-time equivalents including students, faculty, and others as appropriate) or other methods which will result in an equitable distribution to cost objectives in relation to the benefits received and be consistent with guides provided in section E.2. of Part I.

E. *Direct costs of educational service agreements.* Direct costs of work performed under educational service agreements will be determined consistent with the principles set forth in section D of Part I.

F. *Indirect costs of the instruction activity.* The indirect costs of the instruction activity as a whole should include its allocated share of administrative and supportive costs determined in accordance with the principles set forth in section D above and in section F of Part I. Such costs may include other items of indirect cost incurred solely for the instruction activity and not included in the general allocation of the various categories of indirect expenses. Costs incurred for the institutions by State and local governments are allowable as provided for in section C.6. of Part I.

G. *Indirect costs applicable to educational service agreements.* The individual items of indirect costs applicable to the instruction activity as a whole should be assigned to: (1) educational service agreements, and (2) all other instructional work through use of appropriate cost groupings, selected distribution bases, and other reasonable methods as outlined in section E.2. of Part I. A single indirect pool may be used for all educational service agreements provided this results in a reasonably equitable distribution of costs among agreements in relation to indirect support services provided. However, when the level of indirect support significantly varies for work performed either on campus or off campus under a particular agreement or group of agreements, separate cost pools should be established consistent with the principles set forth in section G.1.b. of Part I. Where direct charges are provided for under educational service agreements for such things as commencement fees, student fees, and tuition, the related indirect costs, through separate cost groupings, should be excluded from the indirect costs allocable to the service agreements.

H. *Indirect cost rates for educational service agreements.* An indirect cost rate should be determined for the educational service agreement pool or pools, as established under section G above. The rate in each case should be stated as the percentage which the amount of the particular educational service agreement pool is of the total direct salaries and wages of all educational service agreements identified with such pool. Indirect costs should be distributed to individual agreements by applying the rate or rates established to direct salaries and wages for each agreement. When a fixed rate is negotiated in advance of a fiscal year, the over- or under-recovery for that year may be included as an adjustment to the indirect cost for the next rate negotiation as in sections G.4. and G.5. of Part I.

I. *General standards for selected items of cost.* The standards for selected items of cost as set forth in sections J.1. through J.46. of Part I applicable to research agreements will also be applied to educational service agreements with the following modifications:

1. *Commencement and convocation costs (J.5.).* Expenses incurred for convocations and commencements apply to the instruction activity as a whole. Such expenses are unallowable as direct costs of educational service agreements unless specifically authorized in the agreement or approved in writing by the sponsoring agency. For eligibility of allocation as indirect costs, see section D.

2. *Compensation for personal services (J.7.).* Charges to educational service agreements for personal services will normally be determined and supported consistent with the provisions of section J.7. of Part I. However, the provision for stipulated salary support will not be used for educational service agreements. Also, charges may include compensation in excess of the base salary of a faculty member for the conduct of courses outside the normal duties of such member provided that: (a) extra charges are determined at a rate not greater than the basic salary rate of the member; (b) salary payments for such work follow practices consistently applied within the institution; and (c) specific authorization for such charges is included in the educational service agreement.

3. *Scholarships and student aid costs (J.35.).* Expenses incurred for scholarships and student aid are unallowable as either direct costs or indirect costs of educational service agreements, unless specifically authorized in the educational service agreement or approved in writing by the sponsoring agency.

4. *Student activity costs (J.40.).* Expenses incurred for student activities are unallowable as either direct costs or indirect costs of educational service agreements, unless specifically authorized in the educational service agreement or approved in writing by the sponsoring agency.

5. *Student services costs (J.41.).* Expenses incurred for student services are unallowable as direct costs of educational service agreements unless specifically authorized in the agreement or approved in writing by the sponsoring agency. For eligibility of allocation as indirect costs, see section D.

Appendix E—Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts With Hospitals

I. Purpose and Scope

A. *Objectives.* This appendix provides principles for determining the costs applicable to research and development work performed by hospitals under grants and contracts with the Department of Health, Education, and Welfare. These principles are confined to the subject of cost determination and make no attempt to identify the circumstances or dictate the extent of hospital participation in the financing of a particular research or development project. The principles are designed to provide recognition of the full allocated costs of such research work under generally accepted accounting principles. These principles will be applicable to both proprietary and non-profit hospitals. No provision for profit or other increment above cost is provided for in these principles. However, this is not to be interpreted as precluding a negotiated fee between contracting parties when a fee is appropriate.

B. *Policy guides.* The successful application of these principles requires development of mutual understanding between representatives of hospitals and of the Department of Health, Education, and Welfare as to their scope, applicability and interpretation. It is recognized that:

1. The arrangements for hospital participation in the financing of a research and development project are properly subject to negotiation between the agency and the hospital concerned in accordance with such Government-wide criteria as may be applicable.

2. Each hospital, possessing its own unique combination of staff, facilities and experience, should be encouraged to conduct research in a manner consonant with its own institutional philosophies and objectives.

3. Each hospital in the fulfillment of its contractual obligations should be expected to employ sound management practices.

4. The application of the principles established herein shall be in conformance with the generally accepted accounting practices of hospitals.

5. Hospitals receive reimbursements from the Federal Government for differing types of services under various programs such as support of Research and Development (including discrete clinical centers) Health Services Projects, Medicare, etc. It is essential that consistent procedures for determining reimbursable costs for similar services be employed without regard to

program differences. Therefore, both the direct and indirect costs of research programs must be identified as a cost center(s) for the cost finding and step-down requirements of the Medicare program, or in its absence the Medicaid program.

C. *Application.* All operating agencies within the Department of Health, Education, and Welfare that sponsor research and development work in hospitals will apply these principles and related policy guides in determining the costs incurred for such work under grants and cost-reimbursement type contracts and subcontracts. These principles will also be used as a guide in the pricing of fixed-price contracts and subcontracts.

II. Definitions of Terms

A. "Organized research" means all research activities of a hospital that may be identified whether the support for such research is from a federal, non-federal or internal source.

B. "Departmental research" means research activities that are not separately budgeted and accounted for. Such work, which includes all research activities not encompassed under the term organized research, is regarded for purposes of this document as a part of the patient care activities of the hospital.

C. "Research agreement" means any valid arrangement to perform federally-sponsored research or development including grants, cost-reimbursement type contracts, cost-reimbursement type subcontracts, and fixed-price contracts and subcontracts.

D. "Instruction and training" means the formal or informal programs of educating and training technical and professional health services personnel, primarily medical and nursing training. This activity, if separately budgeted or identifiable with specific costs, should be considered as a cost objective for purposes of indirect cost allocations and the development of patient care costs.

E. "Other hospital activities" means all organized activities of a hospital not immediately related to the patient care, research, and instructional and training functions which produce identifiable revenue from the performance of these activities. If a non-related activity does not produce identifiable revenue, it may be necessary to allocate this expense using an appropriate basis. In such a case, the activity may be included as an allocable cost (See para. III D below.) Also included under this definition is any category of cost treated as "Unallowable," provided such category of cost identifies a function or activity to which a portion of the institution's indirect cost (as defined in para. V. A.) are properly allocable.

F. "Patient care" means those departments or cost centers which render routine or ancillary services to in-patients and/or out-patients. As used in para. IX B.23, it means the cost of these services applicable to patients involved in research programs.

G. "Allocation" means the process by which the indirect costs are assigned as between:

1. Organized research,

2. Patient care including departmental research,

3. Instruction and training, and

4. Other hospital activities.

H. "Cost center" means an identifiable department or area (including research) within the hospital which has been assigned an account number in the hospital accounting system for the purpose of accumulating expense by department or area.

I. "Cost finding" is the process of recasting the data derived from the accounts ordinarily kept by a hospital to ascertain costs of the various types of services rendered. It is the determination of direct costs by specific identification and the proration of indirect costs by allocation.

J. "Step down" is a cost finding method that recognizes that services rendered by certain nonrevenue-producing departments or centers are utilized by certain other nonrevenue producing centers as well as by the revenue-producing centers. All costs of nonrevenue-producing centers are allocated to all centers which they serve, regardless of whether or not these centers produce revenue. Following the apportionment of the cost of the nonrevenue-producing center, that center will be considered closed and no further costs are apportioned to that center.

K. "Scatter bed" is a bed assigned to a research patient based on availability. Research patients occupying these beds are not physically segregated from nonresearch patients occupying beds. Scatter beds are geographically dispersed among all the beds available for use in the hospital. There are no special features attendant to a scatter bed that distinguishes it from others that could just as well have been occupied.

L. "Discrete bed" is a bed or beds that have been set aside for occupancy by research patients and are physically segregated from other hospital beds in an environment that permits an easily ascertainable allocation of costs associated with the space they occupy and the services they generate.

III. Basic Considerations

A. *Composition of total costs.* The cost of a research agreement is comprised of the allowable direct costs incident to its performance plus the allocable portion of the allowable indirect costs of the hospital less applicable credits. (See para. III–E.)

B. *Factors affecting allowability of costs.* The tests of allowability of costs under these principles are:

1. They must be reasonable.

2. They must be assigned to research agreements under the standards and methods provided herein.

3. They must be accorded consistent treatment through application of those generally accepted accounting principles appropriate to the circumstances (See para. I–E.5.) and

4. They must conform to any limitations or exclusions set forth in these principles or in the research agreement as to types or amounts of cost items.

C. *Reasonable costs.* A cost may be considered reasonable if the nature of the goods or services acquired or applied, and the amount involved therefor reflect the action that a prudent person would have taken under the circumstances prevailing at the time the decision to incur the cost was made. Major considerations involved in the determination of the reasonableness of a cost are:

1. Whether or not the cost is of a type generally recognized as necessary for the operation of the hospital or the performance of the research agreement,

2. The restraints or requirements imposed by such factors as arm's length bargaining, federal and state laws and regulations, and research agreement terms and conditions,

3. Whether or not the individuals concerned acted with due prudence in the circumstances, considering their responsibilities to the hospital, its patients, its employees, its students, the Government, and the public at large, and

4. The extent to which the actions taken with respect to the incurrence of the cost are consistent with established hospital policies and practices applicable to the work of the hospital generally, including Government research.

D. *Allocable costs.* 1. A cost is allocable to a particular cost center (i.e., a specific function, project, research agreement, department, or the like) if the goods or services involved are chargeable or assignable to such cost center in accordance with relative benefits received or other equitable relationship. Subject to the foregoing, a cost is allocable to a research agreement if it is incurred solely to advance the work under the research agreement; or it benefits both the research agreement and other work of the hospital in proportions that can be approximated through use of reasonable methods; or it is necessary to the overall operation of the hospital and, in light of the standards provided in this chapter, is deemed to be assignable in part to organized research. Where the purchase of equipment or other capital items are specifically authorized under a research agreement, the amounts thus authorized for such purchases are allocable to the research agreement regardless of the use that may subsequently be made of the equipment or other capital items involved.

2. Any costs allocable to a particular research agreement under the standards provided in these principles may not be shifted to other research agreements in order to meet deficiencies caused by overruns or other fund considerations, to avoid restrictions imposed by law or by terms of the research agreement, or for other reasons of convenience.

E. *Applicable credits.* 1. The term applicable credits refers to those receipts or negative expenditure types of transactions which operate to offset or reduce expense items that are allocable to research agreements as direct or indirect costs as outlined in para. V-A. Typical examples of such transactions are: purchase discounts, rebates, or allowances; recoveries or indemnities on losses; sales of scrap or incidental services; tuition; adjustments of overpayments or erroneous charges; and services rendered to patients admitted to federally funded clinical research centers, primarily for care though also participating in research protocols.

2. In some instances, the amounts received from the Federal Government to finance hospital activities or service operations

should be treated as applicable credits. Specifically, the concept of netting such credit items against related expenditures should be applied by the hospital in determining the rates or amounts to be charged to government research for services rendered whenever the facilities or other resources used in providing such services have been financed directly, in whole or in part, by federal funds. Thus, where such items are provided for or benefit a particular hospital activity, i.e., patient care, research, instruction and training, or other, they should be treated as an offset to the indirect costs apportioned to that activity. Where the benefits are common to all hospital activities they should be treated as a credit to the total indirect cost pool before allocation to the various cost objectives.

IV. Direct Costs

A. *General.* Direct costs are those that can be identified specifically with a particular cost center. For this purpose, the term cost center refers not only to the ultimate centers against which costs are finally lodged such as research agreements, but also to other established cost centers such as the individual accounts for recording particular objects or items of expense, and the separate account groupings designed to record the expenses incurred by individual organizational units, functions, projects and the like. In general, the administrative functions and service activities described in para. VI are identifiable as separate cost centers, and the expenses associated with such centers become eligible in due course for distribution as indirect costs of research agreements and other ultimate cost centers.

B. *Application to research agreements.* Identifiable benefit to the research work rather than the nature of the goods and services involved is the determining factor in distinguishing direct from indirect costs of research agreements. Typical of transactions chargeable to a research agreement as direct costs are the compensation of employees for the time or effort devoted to the performance of work under the research agreement, including related staff benefit and pension plan costs to the extent that such items are consistently accorded to all employees and treated by the hospital as direct rather than indirect costs (see para. V. B4b); the costs of materials consumed or expended in the performance of such work; and other items of expense incurred for the research agreement, such as extraordinary utility consumption. The cost of materials supplied from stock or services rendered by specialized facilities or other institutional service operations may be included as direct costs of research agreements provided such items are consistently treated by the institution as direct rather than indirect costs and are charged under a recognized method of costing or pricing designed to recover only the actual direct and indirect costs of such material or service and conforming to generally accepted cost accounting practices consistently followed by the institution.

V. Indirect Costs

A. *General.* Indirect costs are those that have been incurred for common or joint objectives, and thus are not readily subject to treatment as direct costs of research agreements or other ultimate or revenue producing cost centers. In hospitals such costs normally are classified but not necessarily restricted to the following functional categories: Depreciation; Administrative and General (including fringe benefits if not charged directly); Operation of Plant; Maintenance of Plant; Laundry and Linen Service; Housekeeping; Dietary; Maintenance of Personnel; and Medical Records and Library.

B. *Criteria for distribution.*—1. *Base period.* A base period for distribution of indirect costs is the period during which such costs are incurred and accumulated for distribution to work performed within that period. The base period normally should coincide with the fiscal year established by the hospital, but in any event the base period should be so selected as to avoid inequities in the distribution of costs.

2. *Need for cost groupings.* The overall objective of the allocation process is to distribute the indirect costs described in para. VI to organized research, patient care, instruction and training, and other hospital activities in reasonable proportions consistent with the nature and extent of the use of the hospital's resources by research personnel, medical staff, patients, students, and other personnel or organizations. In order to achieve this objective with reasonable precision, it may be necessary to provide for selective distribution by establishing separate groupings of cost within one or more of the functional categories of indirect costs referred to in para. V-A. In general, the cost groupings established within a functional category should constitute, in each case, a pool of those items of expense that are considered to be of like character in terms of their relative contribution to (or degree of remoteness from) the particular cost centers to which distribution is appropriate. Each such pool or cost grouping should then be distributed individually to the related cost centers, using the distribution base or method most appropriate in the light of the guides set out in B3 below. While this paragraph places primary emphasis on a step-down method of indirect cost computation, para. VIII provides an alternate method which may be used under certain conditions.

3. *Selection of distribution method.* Actual conditions must be taken into account in selecting the method or base to be used in distributing to related cost centers the expenses assembled under each of the individual cost groups established as indicated under B2 above. Where a distribution can be made by assignment of a cost grouping directly to the area benefited, the distribution should be made in that manner. Care should be given, however, to eliminate similar or duplicative costs from any other distribution made to this area. Where the expenses under a cost grouping are more general in nature, the distribution to related cost centers should be made through use of a selected base which will produce results which are equitable to both the Government and the hospital. In general, any cost element or cost-related factor associated with the hospital's work is potentially adaptable for use as a distribution base provided:

a. It can readily be expressed in terms of dollars or other quantitative measure (total direct expenditures, direct salaries, manhours applied, square feet utilized, hours of usage, number of documents processed, population served, and the like); and

b. It is common to the related cost centers during the base period. The essential consideration in selection of the distribution base in each instance is that it be the one best suited for assigning the pool of costs to related cost centers in accord with the relative benefits derived; the traceable cause and effect relationship; or logic and reason, where neither benefit nor cause and effect relationship is determinable.

4. *General consideration on cost groupings.* The extent to which separate cost groupings and selective distribution would be appropriate at a hospital is a matter of judgment to be determined on a case-by-case basis. Typical situations which may warrant the establishment of two or more separate cost groups (based on account classification or analysis) within a functional category include but are not limited to the following:

a. Where certain items or categories of expense relate solely to one of the major divisions of the hospital (patient care, sponsored research, instruction and training, or other hospital activities) or to any two but not all, such expenses should be set aside as a separate cost grouping for direct assignment or selective distribution in accordance with the guides provided in B2 and B3 above.

b. Where any types of expense ordinary treated as indirect cost as outlined in para. V-A are charged to research agreements as direct costs, the similar type expenses applicable to other activities of the institution must through separate cost grouping be excluded from the indirect costs allocable to research agreements.

c. Where it is determined that certain expenses are for the support of a service unit or facility whose output is susceptible of measurement on a workload or other quantitative basis, such expenses should be set aside as a separate cost grouping for distribution on such basis to organized research and other hospital activities.

d. Where organized activities (including identifiable segments of organized research as well as the activities cited in para. II-E) provide their own purchasing, personnel administration, building maintenance, or housekeeping or similar service, the distribution of such elements of indirect cost to such activities should be accomplished through cost grouping which includes only that portion of central indirect costs (such as for overall management) which are properly allocable to such activities.

e. Where the hospital elects to treat as indirect charges the costs of pension plans and other staff benefits, such costs should be set aside as a separate cost grouping for selective distribution to related cost centers, including organized research.

f. Where the hospital is affiliated with a medical school or some other institution which performs organized research on the

hospital's premises, every effort should be made to establish separate cost groupings in the Administrative and General or other applicable category which will reasonably reflect the use of services and facilities by such research. (See also para. VII-A.3)

5. *Materiality.* Where it is determined that the use of separate cost groupings and selective distribution are necessary to produce equitable results, the number of such separate cost groupings within a functional category should be held within practical limits, after taking into consideration the materiality of the amounts involved and the degree of precision attainable through less selective methods of distribution.

C. *Administration of limitations on allowances for indirect costs.* 1. Research grants may be subject to laws and/or administrative regulations that limit the allowance for indirect costs under each such grant to a stated percentage of the direct costs allowed. Agencies that sponsor such grants will establish procedures which will assure that:

a. the terms and amount authorized in each case conform with the provisions of paragraphs III, V and IX of these principles as they apply to matters involving the consistent treatment and allowability of individual items of cost; and

b. the amount actually allowed for indirect costs under each such research grant does not exceed the maximum allowable under the limitation or the amount otherwise allowable under these principles, whichever is the smaller.

2. Where the actual allowance for indirect costs on any research grant must be restricted to the smaller of the two alternative amounts referred to in C1 above, such alternative amounts should be determined in accordance with the following guides:

a. The maximum allowable under the limitation should be established by applying the stated percentage to a direct cost base which shall include all items of expenditure authorized by the sponsoring agency for inclusion as part of the total cost for the direct benefit of the work under the grant; and

b. The amount otherwise allowable under these principles should be established by applying the current institutional indirect cost rate to those elements of direct cost which were included in the base on which the rate was computed.

3. When the maximum amount allowable under a statutory limitation or the terms of a research agreement is less than the amount otherwise allocable as indirect costs under these principles, the amount not recoverable as indirect costs under the research agreement involved may not be shifted to other research agreements.

VI. Identification and Assignment of Indirect Costs

A. *Depreciation or use charge.* 1. The expenses under this heading should include depreciation (as defined in para. IX-B.9a) on buildings, fixed equipment, and movable equipment, except to the extent purchased through federal funds. Where adequate records for the recording of depreciation are not available, a use charge may be substituted for depreciation (See para. IX-B.)

2. The expenses included in this category should be allocated to applicable cost centers in a manner consistent with the guides set forth in para. V-B, on a basis that gives primary emphasis to (a) space utilization with respect to depreciation on buildings and fixed equipment; and (b) specific identification of assets and their use with respect to movable equipment as it relates to patient care, organized research, instruction and training, and other hospital activities. Where such records are not sufficient for the purpose of the foregoing, reasonable estimates will suffice as a means for effecting distribution of the amounts involved.

B. *Administration and general expenses.* 1. The expenses under this heading are those that have been incurred for the administrative offices of the hospital including accounting, personnel, purchasing, information centers, telephone expense, and the like which do not relate solely to any major division of the institution, i.e., solely to patient care, organized research, instruction and training, or other hospital activities.

2. The expenses included in this category may be allocated on the basis of total expenditures exclusive of capital expenditures, or salaries and wages in situations where the results of the distribution made on this basis are deemed to be equitable both to the Government and the hospital; otherwise the distribution of Administration and General expenses should be made through use of selected bases, applied to separate cost groupings established within this category of expenses in accordance with the guides set out in para. V-B.

C. *Operation of plant.* 1. The expenses under this heading are those that have been incurred by a central service organization or at the departmental level for the administration, supervision, and provision of utilities (exclusive of telephone expense) and protective services to the physical plant. They include expenses incurred for such items as power plant operations, general utility costs, elevator operations, protection services, and general parking lots.

2. The expenses included in this category should be allocated to applicable cost centers in a manner consistent with the guides provided in para. V-B, on a basis that gives primary emphasis to space utilization. The allocations should be developed as follows:

a. Where actual space and related cost records are available or can readily be developed and maintained without significant change in the accounting practices, the amount distributed should be based on such records;

b. Where the space and related cost records maintained are not sufficient for purposes of the foregoing, a reasonable estimate of the proportion of total space assigned to the various costs centers normally will suffice as a means for effecting distribution of the amounts involved; or

c. Where it can be demonstrated that an area or volume or space basis of allocation is impractical or inequitable, other bases may be used provided consideration is given to the use of facilities by research personnel and others, including patients.

D. *Maintenance of plant.* 1. The expenses under this heading should include:

a. All salaries and wages pertaining to ordinary repair and maintenance work performed by employees on the payroll of the hospital;

b. All supplies and parts used in the ordinary repairing and maintaining of buildings and general equipment; and

c. Amounts paid to outside concerns for the ordinary repairing and maintaining of buildings and general equipment.

2. The expenses included in this category should be allocated to applicable cost centers in a manner consistent with the guides provided in para. V-B. on a basis that gives primary emphasis to space utilization. The allocations and apportionments should be developed as follows:

a. Where actual space and related cost records are available and can readily be developed and maintained without significant change in the accounting practices, the amount distributed should be based on such records;

b. Where the space and related cost records maintained are not sufficient for purposes of the foregoing, a reasonable estimate of the proportion of total space assigned to the various cost centers normally will suffice as a means for effecting distribution of the amounts involved; or

c. Where it can be demonstrated that an area or volume of space basis of allocation is impractical or inequitable, other basis may be used provided consideration is given to the use of facilities by research personnel and others, including patients.

E. *Laundry and linen.* 1. The expenses under this heading should include:

a. Salaries and wages of laundry department employees, seamstresses, clean linen handlers, linen delivery men, etc.;

b. Supplies used in connection with the laundry operation and all linens purchased; and

c. Amounts paid to outside concerns for purchased laundry and/or linen service.

2. The expense included in this category should be allocated to related cost centers in a manner consistent with the guides provided in para. V-B. on a basis that gives primary emphasis to actual pounds of linen used. The allocations should be developed as follows:

a. Where actual poundage and related cost records are available or can readily be developed and maintained without significant change in the accounting practices, the amount distributed should be based on such records;

b. Where it can be demonstrated that a poundage basis of allocation is impractical or inequitable other bases may be used provided consideration is given to the use of linen by research personnel and others, including patients.

F. *Housekeeping.* 1. The expenses under this heading should include:

a. All salaries and wages of the department head, foreman, maids, porters, janitors, wall washers, and other housekeeping employees;

b. All supplies used in carrying out the housekeeping functions; and

c. Amounts paid to outside concerns for purchased services such as window washing, insect extermination, etc.

2. The expenses included in this category should be allocated to related cost centers in a manner consistent with the guides provided in para. V–B. on a basis that gives primary emphasis to space actually serviced by the housekeeping department. The allocations and apportionments should be developed as follows:

a. Where actual space serviced and related cost records are available or can readily be developed and maintained without significant change in the accounting practices, the amount distributed should be based on such records;

b. Where the space serviced and related cost records maintained are not sufficient for purposes of the foregoing, a reasonable estimate of the proportion of total space assigned to the various cost centers normally will suffice as a means for effecting distribution of the amounts of housekeeping expenses involved; or

c. Where it can be demonstrated that the space serviced basis of allocation is impractical or inequitable, other bases may be used provided consideration is given to the use of housekeeping services by research personnel and others, including patients.

G. *Dietary.* 1. These expenses, as used herein, shall mean only the subsidy provided by the hospital to its employees including research personnel through its cafeteria operation. The hospital must be able to demonstrate through the use of proper cost accounting techniques that the cafeteria operates at a loss to the benefit of employees.

2. The reasonable operating loss of a subsidized cafeteria operation should be allocated to related cost centers in a manner consistent with the guides provided in para. V–B. on a basis that gives primary emphasis to number of employees.

H. *Maintenance (housing) of personnel.* 1. The expenses under this heading should include:

a. The salaries and wages of matrons, clerks, and other employees engaged in work in nurses' residences and other employees' quarters;

b. All supplies used in connection with the operation of such dormitories; and

c. Payments to outside agencies for the rental of houses, apartments, or rooms used by hospital personnel.

2. The expenses included in this category should be allocated to related cost centers in a manner consistent with the guides provided in para. V–B. on a basis that gives primary emphasis to employee utilization of housing facilities. The allocation should be developed as follows:

a. Appropriate credit should be given for all payments received from employees or otherwise to reduce the expense to be allocated;

b. A net cost per housed employee may then be computed; and

c. Allocation should be made on a departmental basis based on the number of housed employees in each respective department.

I. *Medical records and library.* 1. The expenses under this heading should include:

a. The salaries and wages of the records librarian, medical librarian, clerks, stenographers, etc.; and

b. All supplies such as medical record forms, chart covers, filing supplies, stationery, medical library books, periodicals, etc.

2. The expenses included in this category should be allocated to related cost centers in a manner consistent with the guides provided in para. V–B. on a basis that gives primary emphasis to a special time survey of medical records personnel. If this appears to be impractical or inequitable, other bases may be used provided consideration is given to the use of these facilities by research personnel and others, including patients.

VII. Determination and Application of Indirect Cost Rate or Rates

A. *Indirect cost pools.* 1. Subject to (2) below, indirect costs allocated to organized research should be treated as a common pool, and the costs in such common pool should be distributed to individual research agreements benefiting therefrom on a single rate basis.

2. In some instances a single rate basis for use on all government research at a hospital may not be appropriate since it would not take into account those different environmental factors which may affect substantially the indirect costs applicable to a particular segment of government research at the institution. For this purpose, a particular segment of government research may be that performed under a single research agreement or it may consist of research under a group of research agreements performed in a common environment. The environmental factors are not limited to the physical location of the work. Other important factors are the level of the administrative support required, the nature of the facilities or other resources employed, the scientific disciplines or technical skills involved, the organizational arrangements used, or any combination thereof. Where a particular segment of government research is performed within an environment which appears to generate a significantly different level of indirect costs, provision should be made for a separate indirect cost pool applicable to such work. An example of this differential may be in the development of a separate indirect cost pool for a clinical research center grant. The separate indirect cost pool should be developed during the course of the regular distribution process, and the separate indirect cost rate resulting therefrom should be utilized provided it is determined that:

a. Such indirect cost rate differs significantly from that which would have obtained under (1) above; and

b. The volume of research work to which such rate would apply is material in relation to other government research at the institution.

3. It is a common practice for grants or contracts awarded to other institutions, typically University Schools of Medicine, to be performed on hospital premises. In these cases the hospital should develop a separate indirect cost pool applicable to the work under such grants or contracts. This pool should be developed by a selective distribution of only those indirect cost categories which benefit the work performed by the other institution, within the practical limits dictated by available data and the materiality of the amounts involved. Hospital costs determined to be allocable to grants or contracts awarded to another institution may not be recovered as a cost of grants or contracts awarded directly to the hospital.

B. *The distribution base.* Preferably, indirect costs allocated to organized research should be distributed to applicable research agreements on the basis of direct salaries and wages. However, where the use of salaries and wages results in an inequitable allocation of costs to the research agreements, total direct costs or a variation thereof, may be used in lieu of salaries and wages. Regardless of the base used, an indirect cost rate should be determined for each of the separate indirect cost pools developed pursuant to para. VII–A. The rate in each case should be stated as the percentage which the amount of the particular indirect cost pool is of the total direct salaries and wages (or other base selected) for all research agreements identified with such a pool.

C. *Negotiated lump sum for overhead.* A negotiated fixed amount in lieu of indirect costs may be appropriate for self-contained or off-campus research activities where the benefits derived from a hospital's indirect services cannot be readily determined. Such amount negotiated in lieu of indirect costs will be treated as an offset to the appropriate indirect cost pool after allocation to patient care, organized research, instruction and training, and other hospital activities. The base on which such remaining expenses are allocated should be appropriately adjusted.

D. *Predetermined overhead rates.* The utilization of predetermined fixed overhead rates may offer potential advantages in the administration of research agreements by facilitating the preparation of research budgets and permitting more expeditious close out of the agreements when the work is completed. Therefore, to the extent allowed by law, consideration may be given to the negotiation of predetermined fixed rates in those situations where the cost experience and other pertinent factors available are deemed sufficient to enable the Government and the hospital to reach a reasonable conclusion as to the probable level of the indirect cost rate for the ensuing accounting period.

VIII. Simplified Method for Small Institutions

A. *General.* 1. Where the total direct cost of all government-sponsored research and development work at a hospital in a year is minimal, the use of the abbreviated procedure described in para. VIII–B below may be acceptable in the determination of allowable indirect costs. This method may also be used to initially determine a provisional indirect cost rate for hospitals that have not previously established a rate. Under this abbreviated procedure, data taken directly from the institution's most recent annual financial report and immediately available supporting information will be utilized as a basis for determining the indirect cost rate applicable to research agreements at the institution.

2. The rigid formula approach provided under the abbreviated procedure has

limitations which may preclude its use at some hospitals either because the minimum data required for this purpose are not readily available or because the application of the abbreviated procedure to the available data produces results which appear inequitable to the Government or the hospital. In any such case, indirect costs should be determined through use of the regular procedure rather than the abbreviated procedure.

3. In certain instances where the total direct cost of all government-sponsored research and development work at the hospital is more than minimal, the abbreviated procedure may be used if prior permission is obtained. This alternative will be granted only in those cases where it can be demonstrated that the step-down technique cannot be followed.

B. *Abbreviated procedure.* 1. Total expenditures as taken from the most recent annual financial report will be adjusted by eliminating from further consideration expenditures for capital items as defined in para. IX–B.4 and unallowable costs as defined under various headings in para. IX and para. III–E.

2. Total expenditures as adjusted under the foregoing will then be distributed among (a) expenditures applicable to administrative and general overhead functions, (b) expenditures applicable to all other overhead functions, and (c) expenditures for all other purposes. The first group shall include amounts associated with the functional categories, Administration and General, and Dietary, as defined in para. VI. The second group shall include Depreciation, Operation of Plant, Maintenance of Plant, and Housekeeping. The third group—expenditures for all other purposes—shall include the amounts applicable to all other activities, namely, patient care, organized research, instruction and training, and other hospital activities as defined under para. II–E. For the purposes of this section, the functional categories of Laundry and Linen, Maintenance of Personnel, and Medical Records and Library as defined in para. VI shall be considered as expenditures for all other purposes.

3. The expenditures distributed to the first two groups in para. VIII–B.2 should then be adjusted by those receipts or negative expenditure types of transactions which tend to reduce expense items allocable to research agreements as indirect costs. Examples of such receipts or negative expenditures are itemized in para. III–E.1.

4. In applying the procedures in para. VIII–B.1 and B.2, the cost of unallowable activities such as Gift Shop, Investment Property Management, Fund Raising, and Public Relations, when they benefit from the hospital's indirect cost services, should be treated as expenditures for all other purposes. Such activities are presumed to benefit from the hospital's indirect cost services when they include salaries of personnel working in the hospital. When they do not include such salaries, they should be eliminated from the indirect cost rate computation.

5. The indirect cost rate will then be computed in two stages. The first stage requires the computation of an Administrative and General rate component. This is done by applying a ratio of research direct costs over total direct costs to the Administrative and General pool developed under para. VIII–B.2 and B.3 above. The resultant amount—that which is allocable to research—is divided by the direct research cost base. The second stage requires the computation of an All other Indirect Cost rate component. This is done by applying a ratio of research direct space over total direct space to All Other Indirect Cost pool developed under para. VIII–B.2 and B.3 above. The resultant amount—that which is allocable to research—is divided by the direct research cost base.

The total of the two rate components will be the institution's indirect cost rate. For the purposes of this section, the research direct cost or space and total direct cost or space will be that cost or space identified with the functional categories classified under Expenditures for all other purposes under para. VIII–B.2.

IX. General Standards for Selected Items of Cost

A. *General.* This section provides standards to be applied in establishing the allowability of certain items involved in determining cost. These standards should apply irrespective of whether a particular item of cost is properly treated as direct cost or indirect cost. Failure to mention a particular item of cost in the standards is not intended to imply that it is either allowable or unallowable; rather, determination as to allowability in each case should be based on the treatment or standards provided for similar or related items of cost. In case of discrepancy between the provisions of a specific research agreement and the applicable standards provided, the provisions of the research agreement should govern. However, in some cases advance understandings should be reached on particular cost items in order that the full costs of research be supported. The extent of allowability of the selected items of cost covered in this section has been stated to apply broadly to many accounting systems in varying environmental situations. Thus, as to any given research agreement, the reasonableness and allocability of certain items of costs may be difficult to determine, particularly in connection with hospitals which have medical school or other affiliations. In order to avoid possible subsequent disallowance or dispute based on unreasonableness or nonallocability, it is important that prospective recipients of federal funds particularly those whose work is predominantly or substantially with the Government, seek agreement with the Government in advance of the incurrence of special or unusual costs in categories where reasonableness or allocability are difficult to determine. Such agreement may also be initiated by the Government. Any such agreement should be incorporated in the research agreement itself. However, the absence of such an advance agreement on any element of cost will not in itself serve to make that element either allowable or unallowable. Examples of costs on which advance agreements may be particularly important are:

1. Facilities costs, such as;
a. Depreciation
b. Rental
c. Use charges for fully depreciated assets
d. Idle facilities and idle capacity
e. Plant reconversion
f. Extraordinary or deferred maintenance and repair
g. Acquisition of automatic data processing equipment.
2. Preaward costs
3. Non-hospital professional activities
4. Self-insurance
5. Support services charged directly (computer services, printing and duplicating services, etc.)
6. Employee compensation, travel, and other personnel costs, including;
a. Compensation for personal service, including wages and salaries, bonuses and incentives, premium payments, pay for time not worked, and supplementary compensation and benefits, such as pension and retirement, group insurance, severance pay plans, and other forms of compensation
b. Morale, health, welfare, and food service and dormitory costs
c. Training and education costs
d. Relocation costs, including special or mass personnel movement

B. *Selected items.*—1. *Advertising costs.* The term advertising costs means the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television programs, direct mail, exhibits, and the like. The only advertising costs allowable are those which are solely for;

a. The recruitment of persons required for the performance by the institution of obligations arising under the research agreement, when considered in conjunction with all other recruitment costs as set forth in para IX–B.34

b. The procurement of scarce items for the performance of the research agreement; or

c. The disposal of scrap or surplus materials acquired in the performance of the research agreement.

Costs of this nature, if incurred for more than one research agreement or for both research agreement work and other work of the institution, are allowable to the extent that the principles in paragraph IV and V are observed.

2. *Bad debts.* Losses arising from uncollectible accounts and other claims and related collection and legal costs are unallowable except that a bad debt may be included as a direct cost of the research agreement to the extent that it is caused by a research patient and approved by the awarding agency. This inclusion is only intended to cover the situation of the patient admitted for research purposes who subsequently or in conjunction with the research receives clinical care for which a charge is made to the patient. If, after exhausting all means of collecting these charges, a bad debt results, it may be considered an appropriate charge to the research agreement.

3. *Bonding costs.* a. Bonding costs arise when the Government requires assurance against financial loss to itself or others by reason of the act or default of the hospital.

They arise also in instances where the hospital requires similar assurance.

Included are such types as bid, performance, payment, advance payment, infringement, and fidelity bonds.

b. Costs of bonding required pursuant to the terms of the research agreement are allowable.

c. Costs of bonding required by the hospital in the general conduct of its business are allowable to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

4. *Capital expenditures.* The costs of equipment, buildings, and repairs which materially increase the value or useful life of buildings or equipment should be capitalized and are unallowable except as provided for in the research agreement.

5. *Civil defense costs.* Civil defense costs are those incurred in planning for, and the protection of life and property against the possible effects of enemy attack. Reasonable costs of civil defense measures (including costs in excess of normal plant protection costs, first-aid training and supplies, fire-fighting training, posting of additional exit notices and directions, and other approved civil defense measures) undertaken on the institution's premises pursuant to suggestions or requirements of civil defense authorities are allowable when distributed to all activities of the institution. Capital expenditures for civil defense purposes will not be allowed, but a use allowance or depreciation may be permitted in accordance with provisions set forth elsewhere. Costs of local civil defense projects not on the institution's premises are unallowable.

6. *Communication costs.* Costs incurred for telephone services, local and long distance telephone calls, telegrams, radiograms, postage, and the like are allowable.

7. *Compensation for personal services.*—a. *General.* Compensation for personal services covers all remuneration paid currently or accrued to employees of the hospital for services rendered during the period of performance under government research agreements. Such remuneration includes salaries, wages, staff benefits (see para. IX-B.10), and pension plan costs (see para. IX-B.25). The costs of such remuneration are allowable to the extent that the total compensation to individual employees is reasonable for the services rendered and conforms to the established policy of the institution consistently applied, and provided that the charges for work performed directly on government research agreements and for other work allocable as indirect costs to sponsored research are determined and supported as hereinafter provided. For non-profit, non-proprietary institutions, where federally supported programs constitute less than a preponderance of the activity at the institution the primary test of reasonableness will be to require that the institution's compensation policies be applied consistently both to federally-sponsored and non-sponsored activities alike. However, where special circumstances so dictate a contractual clause may be utilized which calls for application of the test of comparability in determining the reasonableness of compensation.

b. *Payroll distribution.* Amounts charged to organized research for personal services, regardless of whether treated as direct costs or allocated as indirect costs, will be based on hospital payrolls which have been approved and documented in accordance with generally accepted hospital practices. In order to develop necessary direct and indirect allocations of cost, supplementary data on time or effort as provided in (c) below, normally need be required only for individuals whose compensation is properly chargeable to two or more research agreements or to two or more of the following broad functional categories: (1) patient care; (2) organized research; (3) instruction and training; (4) indirect activities as defined in para. V-A; or (5) other hospital activities as defined in para. II-E.

c. *Reporting time or effort.* Charges for salaries and wages of individuals other than members of the professional staff will be supported by daily time and attendance and payroll distribution records. For members of the professional staff, current and reasonable estimates of the percentage distribution of their total effort may be used as support in the absence of actual time records. The term professional staff for purposes of this section includes physicians, research associates, and other personnel performing work at responsible levels of activities. These personnel normally fulfill duties, the competent performance of which usually requires persons possessing degrees from accredited institutions of higher learning and/or state licensure. In order to qualify as current and reasonable, estimates must be made no later than one month (though not necessarily a calendar month) after the month in which the services were performed.

d. *Preparation of estimates of effort.* Where required under (c) above, estimates of effort spent by a member of the professional staff on each research agreement should be prepared by the individual who performed the services or by a responsible individual such as a department head or supervisor having first-hand knowledge of the services performed on each research agreement. Estimates must show the allocation of effort between organized research and all other hospital activities in terms of the percentage of total effort devoted to each of the broad functional categories referred to in (b) above. The estimate of effort spent on a research agreement may include a reasonable amount of time spent in activities contributing and intimately related to work under the agreement, such as preparing and delivering special lectures about specific aspects of the ongoing research, writing research reports and articles, participating in appropriate research seminars, consulting with colleagues with respect to related research, and attending appropriate scientific meetings and conferences. The term "all other hospital activities" would include departmental research, administration, committee work, and public services undertaken on behalf of the hospital.

e. *Application of budget estimates.* Estimates determined before the performance of services, such as budget estimates on a monthly, quarterly, or yearly basis do not qualify as estimates of effort spent.

f. *Non-hospital professional activities.* A hospital must not alter or waive hospital-wide policies and practices dealing with the permissible extent of professional services over and above those traditionally performed without extra hospital compensation, unless such arrangements are specifically authorized by the sponsoring agency. Where hospital-wide policies do not adequately define the permissible extent of consultantships or other non-hospital activities undertaken for extra pay, the Government may require that the effort of professional staff working under research agreements be allocated as between (1) hospital activities, and (2) non-hospital professional activities. If the sponsoring agency should consider the extent of non-hospital professional effort excessive, appropriate arrangements governing compensation will be negotiated on a case by case basis.

g. *Salary rates for part-time appointments.* Charges for work performed on government research by staff members having only part-time appointments will be determined at a rate not in excess of that for which he is regularly paid for his part-time staff assignment.

8. *Contingency provisions.* Contributions to a contingency reserve or any similar provisions made for events the occurrence of which cannot be foretold with certainty as to time, intensity, or with an assurance of their happening, are unallowable.

9. *Depreciation and use allowances.* a. Hospitals may be compensated for the use of buildings, capital improvements and usable equipment on hand through depreciation or use allowances. Depreciation is a charge to current operations which distributes the cost of a tangible capital asset, less estimated residual value, over the estimated useful life of the asset in a systematic and logical manner. It does not involve a process of valuation. Useful life has reference to the prospective period of economic usefulness in the particular hospital's operations as distinguished from physical life. Use allowances are the means of allowing compensation when depreciation or other equivalent costs are not considered.

b. Due consideration will be given to government-furnished research facilities utilized by the institution when computing use allowances and/or depreciation if the government-furnished research facilities are material in amount. Computation of the use allowance and/or depreciation will exclude both the cost or any portion of the cost of grounds, buildings and equipment borne by or donated by the Federal Government, irrespective of where title was originally vested or where it presently resides, and secondly, the cost of grounds. Capital expenditures for land improvements (paved areas, fences, streets, sidewalks, utility conduits, and similar improvements not already included in the cost of buildings) are allowable provided the systematic amortization of such capital expenditures has been provided in the institution's books of accounts, based on reasonable determinations of the probable useful lives of the individual items involved, and the share allocated to organized research is developed

from the amount thus amortized for the base period involved.

c. Normal depreciation on a hospital's plant, equipment, and other capital facilities, except as excluded by (d) below, is an allowable element of research cost provided that the amount thereof is computed:

1. Upon the property cost basis used by the hospital for Federal Income Tax purposes (See section 167 of the Internal Revenue Code of 1954); or

2. In the case of non-profit or tax exempt organizations, upon a property cost basis which could have been used by the hospital for Federal Income Tax purposes, had such hospital been subject to the payment of income tax; and in either case

3. By the consistent application to the assets concerned of any generally accepted accounting method, and subject to the limitations of the Internal Revenue Code of 1954 as amended, including—

i. The straight line method;

ii. The declining balance method, using a rate not exceeding twice the rate which would have been used had the annual allowance been computed under the method described in (i) above;

iii. The sum of the years-digits method; and

iv. Any other consistent method productive of an annual allowance which, when added to all allowances for the period commencing with the use of the property and including the current year, does not during the first two-thirds of the useful life of the property exceed the total of such allowances which would have been used had such allowances been computed under the method described in (ii) above.

d. Where the depreciation method is followed, adequate property records must be maintained. The period of useful service (service life) established in each case for usable capital assets must be determined on a realistic basis which takes into consideration such factors as type of construction, nature of the equipment used, technological developments in the particular research area, and the renewal and replacement policies followed for the individual items or classes of assets involved. Where the depreciation method is introduced for application to assets acquired in prior years, the annual charges therefrom must not exceed the amounts that would have resulted had the depreciation method been in effect from the date of acquisition of such assets.

e. Depreciation on idle or excess facilities shall not be allowed except on such facilities as are reasonably necessary for standby purposes.

f. Where an institution elects to go on a depreciation basis for a particular class of assets, no depreciation, rental or use charge may be allowed on any such assets that would be viewed as fully depreciated; provided, however, that reasonable use charges may be negotiated for any such assets if warranted after taking into consideration the cost of the facility or item involved, the estimated useful life remaining at time of negotiation, the actual replacement policy followed in the light of service lives used for calculating depreciation, the effect of any increased maintenance charges or decreased efficiency due to age, and any other factors pertinent to the utilization of the facility or item for the purpose contemplated.

g. Hospitals which choose a depreciation allowance for assets purchased prior to 1966 based on a percentage of operating costs in lieu of normal depreciation for purposes of reimbursement under Public Law 89–97 (Medicare) shall utilize that method for determining depreciation applicable to organized research.

The operating costs to be used are the lower of the hospital's 1965 operating costs or the hospital's current year's allowable costs. The percent to be applied is 5 percent starting with the year 1966–67, with such percentage being uniformity reduced by one-half percent each succeeding year. The allowance based on operating costs is in addition to regular depreciation on assets acquired after 1965. However, the combined amount of such allowance on pre-1966 assets and the allowance for actual depreciation on assets acquired after 1965 may not exceed 6 percent of the hospital's allowable cost for the current year. After total depreciation has been computed, allocation methods are used to determine the share attributable to organized research.

For purposes of this section, "Operating Costs" means the total costs incurred by the hospital in operating the institution, and includes patient care, research, and other activities. "Allowable Costs" means operating costs less unallowable costs as defined in these principles; by the application of allocation methods to the total amount of such allowable costs, the share attributable to Federally-sponsored research is determined.

A hospital which elects to use this procedure under Public Law 89–97 and subsequently changes to an actual depreciation basis on pre-1966 assets in accordance with the option afforded under the Medicare program shall simultaneously change to an actual depreciation basis for organized research.

Where the hospital desires to change to actual depreciation but either has no historical cost records or has incomplete records, the determination of historical cost could be made through appropriate means involving expert consultation with the determination being subject to review and approval by the Department of Health, Education, and Welfare.

h. Where the use allowance method is followed, the use allowance for buildings and improvements will be computed at an annual rate not exceeding two percent of acquisition cost. The use allowance for equipment will be computed at an annual rate not exceeding six and two-thirds percent of acquisition cost of usable equipment in those cases where the institution maintains current records with respect to such equipment on hand. Where the institution's records reflect only the cost (actual or estimated) of the original complement of equipment, the use allowance will be computed at an annual rate not exceeding ten percent of such cost. Original complement for this purpose means the complement of equipment initially placed in buildings to perform the functions currently being performed in such buildings; however, where a permanent change in the function of a building takes place, a redetermination of the original complement of equipment may be made at that time to establish a new original complement. In those cases where no equipment records are maintained, the institution will justify a reasonable estimate of the acquisition cost of usable equipment which may be used to compute the use allowance at an annual rate not exceeding six and two-thirds percent of such estimate.

i. Depreciation and/or use charges should usually be allocated to research and other activities as an indirect cost.

10. *Employee morale, health, and welfare costs and credits.* The costs of house publications, health or first-aid benefits, recreational activities, employees' counseling services, and other expenses incurred in accordance wtih the hospital's established practice or custom for the improvement of working conditions, employer-employee relations, employee morale, and employee performance, are allowable. Such costs will be equitably apportioned to all activities of the hospital. Income generated from any of these activities will be credited to the cost thereof unless such income has been irrevocably set over to employee welfare organizations.

11. *Entertainment costs.* Except as pertains to 10 above, costs incurred for amusement, social activities, entertainment, and any items relating thereto, such as meals, lodging, rentals, transportation, and gratuities are unallowable.

12. *Equipment and other facilities.* The cost of equipment or other facilities are allowable on a direct charge basis where such purchases are approved by the sponsoring agency concerned or provided for by the terms of the research agreement.

13. *Fines and penalties.* Costs resulting from violations of, or failure of the institution to comply with federal, state and local laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of the research agreement, or instructions in writing from the awarding agency.

14. *Insurance and indemnification.* a. Costs of insurance required or approved and maintained pursuant to the research agreement are allowable.

b. Costs of other insurance maintained by the hospital in connection with the general conduct of its activities are allowable subject to the following limitations: (1) types and extent and cost of coverage must be in accordance with sound institutional practice; (2) costs of insurance or of any contributions to any reserve covering the risk of loss of or damage to government owned property are unallowable except to the extent that the Government has specifically required or approved such costs; and (3) costs of insurance on the lives of officers or trustees are unallowable except where such insurance is part of an employee plan which is not unduly restricted.

c. Contributions to a reserve for an approved self-insurance program are allowable to the extent that the types of coverage, extent of coverage, and the rates and premiums would have been allowed had insurance been purchased to cover the risks. Such contributions are subject to prior approval of the Government.

d. Actual losses which could have been covered by permissible insurance (through an approved self-insurance program or otherwise) are unallowable unless expressly provided for in the research agreement, except that costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound management practice as well as minor losses not covered by insurance such as spoilage, breakage and disappearance of small hand tools which occur in the ordinary course of operations are allowable.

15. *Interest, fund raising and investment management costs.* a. Costs incurred for interest on borrowed capital or temporary use of endowment funds, however represented, are unallowable.

b. Costs of organized fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions are not allowable.

c. Costs of investment counsel and staff and similar expenses incurred solely to enhance income from investments are not allowable.

d. Costs related to the physical custody and control of monies and securities are allowable.

16. *Labor relations costs.* Costs incurred in maintaining satisfactory relations between the hospital and its employees, including costs of labor management committees, employees' publications, and other related activities are allowable.

17. *Losses on research agreements or contracts.* Any excess of costs over income under any agreement or contract of any nature is unallowable. This includes, but is not limited to, the hospital's contributed portion by reason of cost-sharing agreements, under-recoveries through negotiation of flat amounts for overhead, or legal or administrative limitations.

18. *Maintenance and repair costs.* a. Costs necessary for the upkeep of property (including government property unless otherwise provided for), which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are to be treated as follows:

1. Normal maintenance and repair costs are allowable;

2. Extraordinary maintenance and repair costs are allowable, provided they are allocated to the periods to which applicable for purposes of determining research costs.

b. Expenditures for plant and equipment, including rehabilitation thereof, which according to generally accepted accounting principles as applied under the hospital's established policy, should be capitalized and subjected to depreciation, are allowable only on a depreciation basis.

19. *Material costs.* Costs incurred for purchased materials, supplies and fabricated parts directly or indirectly related to the research agreement, are allowable. Purchases made specifically for the research agreement should be charged thereto at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received by the institution. Withdrawals from general stores or stockrooms should be charged at their cost under any recognized method of pricing stores withdrawals conforming to sound accounting practices consistently followed by the hospital. Incoming transportation charges are a proper part of material cost. Direct material cost should include only the materials and supplies actually used for the performance of the research agreement, and due credit should be given for any excess materials retained or returned to vendors. Due credit should be given for all proceeds or value received for any scrap resulting from work under the research agreement. Where government donated or furnished material is used in performing the research agreement, such material will be used without charge.

20. *Memberships, subscriptions and professional activity costs.* a. Costs of the hospital's membership in civic, business, technical and professional organizations are allowable.

b. Costs of the hospital's subscriptions to civic, business, professional and technical periodicals are allowable.

c. Costs of meetings and conferences, when the primary purpose is the dissemination of technical information, are allowable. This includes costs of meals, transportation, rental of facilities, and other items incidental to such meetings or conferences.

21. *Organization costs.* Expenditures such as incorporation fees, attorneys' fees, accountants' fees, brokers' fees, fees to promoters and organizers in connection with (a) organization or reorganization of a hospital, or (b) raising capital, are unallowable.

22. *Other business expenses.* Included in this item are such recurring expenses as registry and transfer charges resulting from changes in ownership of securities issued by the hospital, cost of shareholders meetings preparation and publication of reports to shareholders, preparation and submission of required reports and forms to taxing and other regulatory bodies, and incidental costs of directors and committee meetings. The above and similar costs are allowable when allocated on an equitable basis.

23. *Patient care.* The cost of routine and ancillary or special services to research patients is an allowable direct cost of research agreements.

a. Routine services shall include the costs of the regular room, dietary and nursing services, minor medical and surgical supplies and the use of equipment and facilities for which a separate charge is not customarily made.

b. Ancillary or special services are the services for which charges are customarily made in addition to routine services, such as operating rooms, anesthesia, laboratory, BMR-EKG, etc.

c. Patient care, whether expressed as a rate or an amount, shall be computed in a manner consistent with the procedures used to determine reimbursable costs under Public Law 89–97 (Medicare Program) as defined under the "Principles Of Reimbursement For Provider Costs" published by the Social Security Administration of the Department of Health, Education, and Welfare. The allowability of specific categories of cost shall be in accordance with those principles rather than the principles for research contained herein. In the absence of participation in the Medicare program by a hospital, all references to the Medicare program in these principles shall be construed as meaning the Medicaid program.

i. Once costs have been recognized as allowable, the indirect costs or general service center's cost shall be allocated (stepped-down) to special service centers, and all patient and nonpatient costs centers based upon actual services received or benefiting these centers.

ii. After allocation, routine and ancillary costs shall be apportioned to scatter-bed research patients on the same basis as is used to apportion costs to Medicare patients, i.e. using either the departmental method or the combination method, as those methods are defined by the Social Security Administration; except that final settlement shall be on a grant-by-grant basis. However, to the extent that the Social Security Administration has recognized any other method of cost apportionment, that method generally shall also be recognized as applicable to the determination of research patient care costs.

iii. A cost center must be established on Medicare reimbursement forms for each discrete-bed unit grant award received by a hospital. Routine costs should be stepped-down to this line item(s) in the normal course of stepping-down costs under Medicare/Medicaid requirements. However, in stepping-down routine costs, consideration must be given to preventing a step-down of those costs to discrete-bed unit line items that have already been paid for directly by the grant, such as bedside nursing costs. Ancillary costs allocable to research discrete-bed units shall be determined and proposed in accordance with Section 23.c.ii.

d. Where federally sponsored research programs provide specifically for the direct reimbursement of nursing, dietary, and other services, appropriate adjustment must be made to patient care costs to preclude duplication and/or misallocation of costs.

24. *Patent costs.* Costs of preparing disclosures, reports and other documents required by the research agreement and of searching the art to the extent necessary to make such invention disclosures are allowable. In accordance with the clauses of the research agreement relating to patents, costs of preparing documents and any other patent costs, in connection with the filing of a patent application where title is conveyed to the Government, are allowable. (See also para. IX–B.36.)

25. *Pension plan costs.* Costs of the hospital's pension plan which are incurred in accordance with the established policies of the institution are allowable, provided such policies meet the test of reasonableness and the methods of cost allocation are not discriminatory, and provided appropriate adjustments are made for credits or gains arising out of normal and abnormal employee turnover or any other contingencies that can result in forfeitures by employees which inure to the benefit of the hospital.

26. *Plan security costs.* Necessary expenses incurred to comply with government security

requirements including wages, uniforms and equipment of personnel engaged in plant protection are allowable.

27. *Preresearch agreement costs.* Costs incurred prior to the effective date of the research agreement, whether or not they would have been allowable thereunder if incurred after such date, are unallowable unless specifically set forth and identified in the research agreement.

28. *Professional services costs.* a. Costs of professional services rendered by the members of a particular profession who are not employees of the hospital are allowable subject to (b) and (c) below when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Government. Retainer fees to be allowable must be reasonably supported by evidence of services rendered.

b. Factors to be considered in determining the allowability of costs in a particular case include (1) the past pattern of such costs, particularly in the years prior to the award of government research agreements on the institution's total activity; (2) the nature and scope of managerial services expected of the institution's own organizations; and (3) whether the proportion of government work to the hospital's total activity is such as to influence the institution in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under government research agreements.

c. Costs of legal, accounting and consulting services, and related costs incurred in connection with organization and reorganization or the prosecution of claims against the Government are unallowable. Costs of legal, accounting and consulting services, and related costs incurred in connection with patent infringement litigation are unallowable unless otherwise provided for in the research agreement.

29. *Profits and losses on disposition of plant equipment, or other assets.* Profits or losses of any nature arising from the sale or exchange of plant, equipment, or other capital assets, including sales or exchange of either short- or long-term investments, shall be excluded in computing research agreement costs.

30. *Proposal costs.* Proposal costs are the costs of preparing bids or proposals on potential government and non-government research agreements or projects, including the development of technical data and cost data necessary to support the institution's bids or proposals. Proposal costs of the current accounting period of both successful and unsuccessful bids and proposals normally should be treated as indirect costs and allocated currently to all activities of the institution, and no proposal costs of past accounting periods will be allocable in the current period to the government research agreement. However, the institution's established practices may be to treat proposal costs by some other recognized method. Regardless of the methods used, the results obtained may be accepted only if found to be reasonable and equitable.

31. *Public information services costs.* Costs of news releases pertaining to specific research or scientific accomplishment are unallowable unless specifically authorized by the sponsoring agency.

32. *Rearrangement and alteration costs.* Costs incurred for ordinary or normal rearrangement and alteration of facilities are allowable. Special rearrangement and alteration costs incurred specifically for a project are allowable only as a direct charge when such work has been approved in advance by the sponsoring agency concerned.

33. *Reconversion costs.* Costs incurred in the restoration or rehabilitation of the institution's facilities to approximately the same condition existing immediately prior to commencement of government research agreement work, fair wear and tear excepted, are allowable.

34. *Recruiting costs.* a. Subject to (b), (c), and (d) below, and provided that the size of the staff recruited and maintained is in keeping with workload requirements, costs of "help wanted" advertising, operating costs of an employment office necessary to secure and maintain an adequate staff, costs of operating an aptitude and educational testing program, travel costs of employees while engaged in recruiting personnel, travel costs of applicants for interviews for prospective employment, and relocation costs incurred incident to recruitment of new employees are allowable to the extent that such costs are incurred pursuant to a well managed recruitment program. Where an institution uses employment agencies, costs not in excess of standard commercial rates for such services are allowable.

b. In publications, costs of help wanted advertising that includes color, includes advertising material for other than recruitment purposes, or is excessive in size (taking into consideration recruitment purposes for which intended and normal institutional practices in this respect) are unallowable.

c. Costs of help wanted advertising, special emoluments; fringe benefits, and salary allowances incurred to attract professional personnel from other institutions that do not meet the test of reasonableness or do not conform with the established practices of the institution are unallowable.

d. Where relocation costs incurred incident to recruitment of a new employee have been allowed either as an allocable direct or indirect cost, and the newly hired employee resigns for reasons within his control within twelve months after hire, the institution will be required to refund or credit such relocations costs as were charged to the Government.

35. *Rental costs (including sale and lease-back of facilities).* a. Rental costs of land, building, and equipment and other personal property are allowable if the rates are reasonable in light of such factors as rental costs of comparable facilities and market conditions in the area, the type, life expectancy, condition, and value of the facilities leased, options available, and other provisions of the rental agreement. Application of these factors, in situations where rentals are extensively used, may involve among other considerations comparison of rental costs with the amount which the hospital would have received had it owned the facilities.

b. Charges in the nature of rent between organizations having a legal or other affiliation or arrangement such as hospitals, medical schools, foundations, etc., are allowable to the extent such charges do not exceed the normal costs of ownership such as depreciation, taxes, insurance, and maintenance, provided that no part of such costs shall duplicate any other allowed costs.

c. Unless otherwise specifically provided in the agreement, rental costs specified in sale and lease-back agreements incurred by hospitals through selling plant facilities to investment organizations such as insurance companies or to private investors, and concurrently leasing back the same facilities are allowable only to the extent that such rentals do not exceed the amount which the hospital would have received had it retained legal title to the facilities.

36. *Royalties and other costs for use of patents.* Royalties on a patent or amortization of the cost of acquiring a patent or invention or rights thereto necessary for the proper performance of the research agreement and applicable to tasks or processes thereunder are allowable unless the Government has a license or the right to free use of the patent, the patent has been adjudicated to be invalid, or has been administratively determined to be invalid, the patent is considered to be unenforceable, or the patent has expired.

37. *Severance pay.* a. Severance pay is compensation in addition to regular salaries and wages which is paid by a hospital to employees whose services are being terminated. Costs of severance pay are allowable only to the extent that such payments are required by law, by employer-employee agreement, by established policy that constitutes in effect an implied agreement on the institution's part, or by circumstances of the particular employment.

b. Severance payments that are due to normal, recurring turnover, and which otherwise meet the conditions of (a) above may be allowed provided the actual costs of such severance payments are regarded as expenses applicable to the current fiscal year and are equitably distributed among the institution's activities during that period.

c. Severance payments that are due to abnormal or mass terminations are of such conjectural nature that allowability must be determined on a case-by-case basis. However, the Government recognizes its obligation to participate to the extent of its fair share in any specific payment.

38. *Specialized service facilities operated by a hospital.* a. The costs of institutional services involving the use of highly complex and specialized facilities such as electronic computers and reactors are allowable provided the charges therefor meet the conditions of (b) or (c) below, and otherwise take into account any items of income or federal financing that qualify as applicable credits under para. III–E.

b. The costs of such hospital services normally will be charged directly to applicable research agreements based on actual usage or occupancy of the facilities at rates that (1) are designed to recover only actual costs of providing such services, and (2) are applied on a nondiscriminatory basis as between organized research and other

work of the hospital including commercial or accommodation sales and usage by the hospital for internal purposes. This would include use of such facilities as radiology, laboratories, maintenance men used for a special purpose, medical art, photography, etc.

c. In the absence of an acceptable arrangement for direct costing as provided in (b) above, the costs incurred for such institutional services may be assigned to research agreements as indirect costs, provided the methods used achieve substantially the same results. Such arrangements should be worked out in coordination with all government users of the facilities in order to assure equitable distribution of the indirect costs.

39. *Special administrative costs.* Costs incurred for general public relations activities, catalogs, alumni activities, and similar services are unallowable.

40. *Staff and/or employee benefits.* a. Staff and/or employee benefits in the form of regular compensation paid to employees during periods of authorized absences from the job such as for annual leave, sick leave, military leave and the like are allowable provided such costs are absorbed by all hospital activities including organized research in proportion to the relative amount of time or effort actually devoted to each.

b. Staff benefits in the form of employer contributions or expenses for Social Security taxes, employee insurance, Workmen's Compensation insurance, the Pension Plan (see para. IX–B.25), hospital costs or remission of hospital charges to the extent of costs for individual employees or their families, and the like are allowable provided such benefits are granted in accordance with established hospital policies, and provided such contributions and other expenses whether treated as indirect costs or an increment of direct labor costs are distributed to particular research agreements and other activities in a manner consistent with the pattern of benefits accruing to the individuals or groups of employees whose salaries and wages are chargeable to such research agreements and other activities.

41. *Taxes.* a. In general, taxes which the hospital is required to pay and which are paid or accrued in accordance with generally accepted accounting principles, and payments made to local governments in lieu of taxes which are commensurate with the local government services received are allowable except for (1) taxes from which exemptions are available to the hospital directly or which are available to the hospital based on an exemption afforded the Government and in the latter case when the sponsoring agency makes available the necessary exemption certificates, (2) special assessments on land which represent capital improvements, and (3) Federal Income Taxes.

b. Any refund of taxes, interest, or penalties, and any payment to the hospital of interest thereon attributable to taxes, interest or penalties, which were allowed as research agreement costs will be credited or paid to the Government in the manner directed by the Government provided any interest actually paid or credited to a hospital incident to a refund of tax, interest, and penalty will be paid or credited to the Government only to the extent that such interest accrued over the period during which the hospital had been reimbursed by the Government for the taxes, interest, and penalties.

42. *Transportation costs.* Costs incurred for inbound freight, express, cartage, postage and other transportation services relating either to goods purchased, in process, or delivered are allowable. When such costs can readily be identified with the items involved, they may be charged directly as transportation costs or added to the cost of such items. Where identification with the material received cannot readily be made, inbound transportation costs may be charged to the appropriate indirect cost accounts if the institution follows a consistent equitable procedure in this respect. Outbound freight, if reimbursable under the terms of the research agreement, should be treated as a direct cost.

43. *Travel costs.* a. Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the hospital. Such costs may be charged on an actual basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two provided the method used is applied to an entire trip and not to selected days of the trip, and results in charges consistent with those normally allowed by the institution in its regular operations.

b. Travel costs are allowable subject to (c) and (d) below when they are directly attributable to specific work under a research agreement or when they are incurred in the normal course of administration of the hospital or a department or research program thereof.

c. The difference in cost between first class air accommodations and less than first class air accommodations is unallowable except when less than first class air accommodations are not reasonably available to meet necessary mission requirements such as where less than first class accommodations would (1) require circuitous routing, (2) require travel during unreasonable hours, (3) greatly increase the duration of the flight, (4) result in additional costs which would offset the transportation savings, or (5) offer accommodations which are not reasonably adequate for the medical needs of the traveler.

d. Costs of personnel movements of a special or mass nature are allowable only when authorized or approved in writing by the sponsoring agency or its authorized representative.

44. *Termination costs applicable to contracts.* a. Contract terminations generally give rise to the incurrence of costs or to the need for special treatment of costs which would not have arisen had the contract not been terminated. Items peculiar to termination are set forth below. They are to be used in conjunction with all other provisions of these principles in the case of contract termination.

b. The cost of common items of material reasonably usable on the hospital's other work will not be allowable unless the hospital submits evidence that it could not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the institution, consideration should be given to the hospital's plans for current scheduled work or activities including other research agreements. Contemporaneous purchases of common items by the hospital will be regarded as evidence that such items are reasonably usable on the hospital's other work. Any acceptance of common items as allowable to the terminated portion of the contract should be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirement of other work.

c. If in a particular case, despite all reasonable efforts by the hospital, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in these principles, except that any such costs continuing after termination due to the negligent or willful failure of the hospital to discontinue such costs will be considered unacceptable.

d. Loss of useful value of special tooling and special machinery and equipment is generally allowable, provided (1) such special tooling, machinery or equipment is not reasonably capable of use in the other work of the hospital; (2) the interest of the Government is protected by transfer of title or by other means deemed appropriate by the contracting officer; and (3) the loss of useful value as to any one terminated contract is limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the contract bears to the entire terminated contract and other government contracts for which the special tooling, special machinery or equipment was acquired.

e. Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated contract, less the residual value of such leases, if (1) the amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the contract and such further period as may be reasonable; and (2) the hospital makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease. There also may be included the cost of alterations of such leased property, provided such alterations were necessary for the performance of the contract and of reasonable restoration required by the provisions of the lease.

f. Settlement expenses including the following are generally allowable: (1) accounting, legal, clerical, and similar costs reasonably necessary for the preparation and presentation to contracting officers of settlement claims and supporting data with respect to the terminated portion of the contract and the termination and settlement of subcontracts; and (2) reasonable costs for the storage, transportation, protection, and disposition of property provided by the Government or acquired or produced by the institution for the contract.

g. Subcontractor claims including the allocable portion of claims which are

common to the contract and to other work of the contractor are generally allowable.

45. *Voluntary services.* The value of voluntary services provided by sisters or other members of religious orders is allowable provided that amounts do not exceed that paid other employees for similar work. Such amounts must be identifiable in the records of the hospital as a legal obligation of the hospital. This may be reflected by an agreement between the religious order and the hospital supported by evidence of payments to the order.

Appendix F—Principles for Determining Costs Applicable to Grants and Contracts With Nonprofit Institutions

A. Purpose and Scope

1. *Objectives.* This Appendix provides principles for determining the costs applicable to grants and contracts awarded by the Department of Health, Education, and Welfare and performed by nonprofit organizations other than educational institutions, hospitals and State and local Government organizations. These principles are confined to the subject of cost determination and make no attempt to identify the circumstances or dictate the extent of agency and institutional participation in the financing of a particular project. The principles are designed to provide recognition of the full allocated costs of work under generally accepted accounting principles. No provision for profit or other increment above cost is provided for in these principles.

2. *Definition of Nonprofit Institution.* (a) A nonprofit institution for purposes of this document is any corporation, foundation, trust, association, cooperative or other organization other than (i) educational institutions, (ii) hospitals and (iii) State and local Governmental agencies, bureaus or departments, which is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest, which is not organized primarily for profit and which uses all income exceeding costs to maintain, improve and/or expand its operations.

The charter or other legally binding authority for the existence of the institution must provide that no part of the net earnings, properties or other assets of the institution, on dissolution or otherwise, shall inure to the benefits of any private person or individual including any member, employee, officer, director or trustee of the institution, and that, on liquidation or dissolution all properties and assets remaining after providing for all debts and obligations shall be distributed and paid over to such other fund, foundation or other organization formed and operated as a nonprofit institution, as defined herein, as the board of directors or trustees may determine. Institutions which have received tax exemptions as nonprofit institutions from the U.S. Internal Revenue Service shall be considered to have met the criteria of this definition.

(b) For purposes of this document, the terms nonprofit and not-for-profit as they are descriptively applied to institutions shall be considered synonymous provided the requirements of 2(a) are met.

3. *Policy guides.* The successful application of these principles requires development of mutual understanding between representatives of nonprofit institutions and of the Federal Government as to their scope, applicability, and interpretation. It is recognized that the arrangements for agency and institutional participation in the financing of a project are properly subject to negotiation between the agency and the institution concerned in accordance with such governmentwide criteria as may be applicable, that each institution should be expected to employ sound management practice in the fulfillment of its obligation, and that each grantee or contractor organization in recognition of its own unique combination of staff, facilities and experience should be responsible for employing whatever form of organization and management techniques as may be necessary to assure proper efficient administration.

4. *Application.* These principles shall be applied in determining cost incurred in the performance of all grants and cost-reimbursement type contracts awarded by the Department of Health, Education, and Welfare. The principles shall also apply to cost-reimbursement type contracts performed under DHEW grants and cost-reimbursement type subcontracts and shall be used as a guide in the pricing of fixed price contracts and subcontracts. The principles do not apply to construction grants or contracts.

B. Basic Considerations

1. *Composition of total cost.* The total cost of a contract or grant is the sum of the allowable direct and indirect costs allocable to the grant/contract less any applicable credits. In ascertaining what constitutes costs, any generally accepted accounting method of determining or estimating costs that is equitable under the circumstances may be used.

2. *Factors affecting allowability of costs.* Factors to be considered in determining the allowability of individual items of cost include (a) reasonableness, (b) allocability, (c) application of those generally accepted accounting principles and practices appropriate to the particular circumstances, and (d) any limitations or exclusions set forth in this document or otherwise included in the grant/contract as to types or amounts of cost items.

3. *Definition of reasonableness.* A cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by an ordinarily prudent person in the conduct of competitive business. The question of the reasonableness of specific costs must be scrutinized with particular care in connection with institutions or separate divisions thereof which may not be subject to effective competitive restraints. What is reasonable depends upon a variety of considerations and circumstances involving both the nature and amount of the cost in question. In determining the reasonableness of a given cost, consideration shall be given to:

(a) Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the institution or the performance of the grant/contract.

(b) The restraints or requirements imposed by such factors as generally accepted sound business practices, arms length bargaining, Federal and State laws and regulations, and grant/contract terms and specifications;

(c) The action that a prudent businessman would take in the circumstances, considering his responsibilities to the public at large, the Government, his employees, his clients, shareholders or members and the fulfillment of the purposes for which the institution was organized; and

(d) Significant deviations from the established practices of the institution which may unjustifiably increase the grant/contract costs.

4. *Definition of allocability.* A cost is allocable if it is assignable or chargeable to a particular cost objective, such as a grant/contract, project, product, service, process, or other major activity, in accordance with the relative benefits received or other equitable relationship. Subject to the foregoing, a cost is allocable to a Government grant/contract if it:

(a) Is incurred specifically for the grant/contract;

(b) Benefits both the grant/contract and other work and can be distributed to them in reasonable proportion to the benefits received; or

(c) Is necessary to the overall operation of the institution, although a direct relationship to any particular cost objective cannot be shown.

Where an organization utilizes the Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations (or comparable generally accepted accounting standards peculiar to its particular organizational structure or activity) to allocate costs to non-HEW supported activities it must also use such standards to allocate costs to HEW grants/contracts.

5. *Applicable credits.* The term applicable credits refers to those receipt or negative expenditure types of transactions which operate to offset or reduce expense items that are allocable to grants or contracts as direct or indirect costs. Typical examples of such transactions are: purchase discounts, rebates or allowances; recoveries or indemnities on losses; sales of scrap or incidental services; and adjustments of overpayments or erroneous charges. The applicable portion of any income, rebate, allowance, and other credit relating to any allowable cost, received by or accruing to the grantee/contractor shall be credited to the Government either as a cost reduction or by cash refund, as appropriate.

C. Direct Costs

1. A direct cost is any cost which can be identified specifically with a particular cost objective. Direct costs are not limited to items which are incorporated in the end product as material or labor. Costs identified specifically with the grant/contract are direct costs of the grant/contract and may be charged directly thereto. Costs identified specifically with other work of the institution are direct costs of that work and are not to be charged to the grant/contract either directly or indirectly. Items charged as direct cost to Government-supported projects must be

charged in a uniform manner to all other work of the institution in order to preclude an overcharge to the Government as a result of the Government's participation in the indirect cost pool. Conversely, where the institution's established accounting system provides for the treatment of certain items of cost as direct costs of the institution, then the same items must be considered direct costs to Government-supported projects and may not be included in the indirect cost pool.

2. Certain types of cost, or costs associated with certain activities are not reimbursable as a charge to a DHEW grant/contract. These unallowable costs or activities are identified in section G. Even though a particular activity or cost is designated as unallowable for purposes of computing costs charged to Government work, it nonetheless must be treated as a direct cost or activity if a portion of the institution's indirect cost (as defined in section D) is properly allocable to it. The amount of indirect cost allocated must be in accordance with the principles set forth in section D–2. In general, an unallowable institutional activity shall be treated as a direct function when it (1) includes salaries of personnel, (2) occupies space, and (3) is serviced by an indirect cost grouping(s). Thus the costs associated with the following types of activities when normal or necessary to an institution's primary mission shall be treated as direct costs:

(a) Maintenance of membership rolls, subscriptions, publications and related functions.

(b) Providing services and information to members, legislative or administrative bodies or the public.

(c) Promotion, lobbying, and other forms of public relations.

(d) Meetings and conferences except those held to conduct the general administration of the institution.

(e) Fund raising.

(f) Maintenance, protection, and investment of special funds not used in operation of institutions.

(g) Administration of group benefits on behalf of members or clients including life and hospital insurance, annuity or retirement plans, financial aid, etc.

(h) Other activities performed primarily as a service to a membership, clients, or the public.

3. This definition shall be applied to all items of cost of significant amount unless the institution demonstrates that the application of any different current practice achieves substantially the same results. Direct cost items of minor amount may be distributed as indirect costs as provided in section D.

D. Indirect Costs

1. An indirect cost is one which, because of its incurrence for common or joint objectives, is not readily subject to treatment as a direct cost. Minor direct cost items may be considered to be indirect costs for reasons of practicality. After direct costs have been determined and charged directly to the grant/contract or other work as appropriate, indirect costs are those remaining to be allocated to the several classes of work. The overall objective of the allocation process is to distribute the indirect costs of the institution to its various major activities or cost objectives in reasonable proportions with the benefits provided to those activities or cost objective. Because of the diverse natures and purposes of organizations falling within the definition of a non-profit organization, it is impractical to specifically identify those functions which constitute major activities for purposes of identifying and distributing indirect costs. Such identification will be dependent upon an institution's purpose-in-being, the services it renders to the public, its clients and/or members, the amount of effort devoted to fund raising activities, public relations, and membership activities, etc. (See section C–2.)

2. Indirect costs shall be accumulated by logical cost groupings with due consideration of the reasons for incurring the costs. Each grouping should be determined so as to permit distribution of the grouping on the basis of the benefits accruing to the several cost objectives. Sub-grouping may be required where there is no single equitable distribution base for all the elements of cost comprising a group. Actual conditions must be taken into account in selecting the method or base to be used in distributing the expenses assembled under each of the individual cost groupings established to applicable cost objectives. Where a distribution can be made by assignment of a cost grouping directly to the area benefited, the distribution should be made in that manner. Where the expenses under a cost grouping are more general in nature, the distribution to the cost objectives should be made through use of a selected base which will produce results which are equitable to both the Government and the institution. In general, any cost element or cost-related factor associated with the institution's work is potentially adaptable for use as a distribution base provided (1) it can readily be expressed in terms of dollars or other quantitative measure (total direct expenditures, direct salaries, manhours applied, square feet utilized, hours of usage, number of documents processed, population served, and the like); and (2) it is common to the cost objectives during the base period. The essential consideration in selection of the distribution base in each instance is that it be the one best suited for assigning the pool of costs to the cost objectives in accord with the relative benefits derived; the traceable cause and effect relationship; or logic and reason, where neither benefit nor cause and effect relationship is determinable.

3. The number and composition of the groupings should be governed by practical considerations and should be such as not to complicate unduly the allocation where substantially the same results are achieved through less precise methods.

4. A base period for distribution of indirect costs is the period during which such costs are incurred and accumulated for distribution to work performed within that period. The base period normally should coincide with the fiscal year established by the institution, but in any event the base period should be so selected as to avoid inequities in the distribution of costs.

E. Determination and Application of Indirect Cost Rate or Rates

1. *Indirect cost pools.* (a) Subject to (b) below, indirect costs allocable to an institution's direct functions should be treated as a common pool, and the costs in such common pool should then be distributed to the individual projects benefiting therefrom by use of a single rate.

(b) In some instances a single rate for use across the board on all activities at an institution may not be appropriate, since it would not take into account those different environmental factors which may affect substantially the indirect costs applicable to a particular segment of work at the institution. For this purpose, a particular segment of work may be that performed under a single grant/contract or it may consist of work under a group of grants/contracts performed in a common environment. The environmental factors are not limited to the physical location of the work. Other important factors are the level of the administrative support required, the nature of the facilities or other resources employed, the scientific disciplines or technical skills involved, the organizational arrangements used, or any combination thereof. Where a particular segment of work is performed within an environment which appears to generate a significantly different level of indirect costs, provision should be made for a separate indirect cost pool applicable to such work. The separate indirect cost pool should be developed during the course of the regular distribution process, and the separate indirect cost rate resulting therefrom should be utilized provided it is determined that (1) such indirect cost rate differs significantly from that which would have been obtained under (a) above, and (2) the volume of work to which such rate would apply is material in relation to other activity at the institution.

2. *The distribution base.* Indirect costs should be distributed to each applicable project on the basis of direct salaries and wages, total direct costs or other basis which results in an equitable distribution. For this purpose, an indirect cost rate should be determined for each of the separate indirect cost pools developed pursuant to section E.1. The rate in each case should be stated as the percentage which the amount of the particular indirect cost pool is of the base selected.

F. Application of Principles and Procedures

1. Costs shall be allowed to the extent that they are reasonable (see B.3) allocable (see B.4) and determined to be allowable in view of the other factors set forth in paragraph B.2. and section G. These criteria apply to all of the selected items of cost which follow notwithstanding that particular guidance is provided in connection with certain specific items for emphasis or clarity.

2. Costs of all subcontracts under a grant or cost-reimbursement type contract are subject to those Federal cost regulations and policies appropriate to the subcontract involved. Thus if the subcontract is for supplies or services with a nonprofit institution other than an educational institution, hospital or State and local governmental unit this document would

apply; if the subcontract is for supplies or services with a commercial organization, Federal Procurement Regulation Part 1.15.2 would apply; if the subcontract is with an educational institution. Appendix D to this Part (Federal Procurement Regulation Part 1.15.3) would apply; if the subcontract is with a hospital, the Department of Health, Education, and Welfare's Cost Principles for Hospitals would apply (see Appendix E to this Part).

3. Selected items of cost are treated in Section G. However, section G does not cover every element of cost and every situation that might arise in a particular case. Failure to treat any item of cost in Section G is not intended to imply that it is either allowable or unallowable. With respect to all items, whether or not specifically covered, determination of allowability shall be based on the principles and standards set forth in this document and, where appropriate, the treatment of similar or related selected items.

G. General Standards for Selected Items of Cost

Sections G–1 through G–46 provide standards to be applied in establishing the allowability of certain items involved in determining costs. These standards should apply irrespective of whether a particular item of cost is properly treated as direct cost or indirect cost. Failure to mention a particular item of cost in the standards is not intended to imply that it is either allowable or unallowable; rather determination as to allowability in each case should be based on the treatment or standards provided for similar or related items of cost. In case of a discrepancy between the provisions of a specific grant/contract and the applicable standards provided, the provisions of the grant/contract shall govern. Under any given grant/contract the reasonableness and allocability of certain items of costs may be difficult to determine. This is particularly true in connection with nonprofit institutions which are so diverse in nature and not subject to effective competitive restraints. In order to avoid possible subsequent disallowance or dispute based on unreasonableness or nonallocability, it is important that institutions entering into grants or contracts with the Government seek agreement in advance of the incurrence of special or unusual costs in categories where reasonableness or allocability are difficult to determine. Such action may also be initiated by the Government. Examples of costs on which advance agreements may be particularly important are:

1. Compensation for personal services;
2. Consultant fees;
3. Deferred maintenance costs;
4. Excess facility costs;
5. Materiel, services, and supplies sold between organizations or divisions under common control;
6. Preaward costs;
7. Publication and public information costs;
8. Royalties;
9. Training and educational costs;
10. Travel costs, as related to special or mass personnel movement, and to the class of air-travel accommodations allowable;
11. Use charge for fully depreciated assets;
12. Depreciation or use charge on assets donated to the institution by third parties.

1. *Advertising costs.* (a) Advertising costs mean the costs of advertising media and corollary administrative costs. Advertising media include magazine, newspapers, radio, and television programs, direct mail, trade papers, outdoor advertising, dealer cards, and window displays, conventions, exhibits, free goods, and samples, and the like.

(b) The only advertising costs allowable are those which are solely for (1) the recruitment of personnel required for the performance by the institution of obligations arising under the grant/contract, when considered in conjunction with all other recruitment costs, as set forth in G.36; (2) the procurement of scarce items for the performance of the grant/contract or (3) the disposal of scrap or surplus materials acquired in the performance of the project. Costs of this nature, if incurred for more than one Government award or for both Government work and other work of the institution, are allowable to the extent that the principles in paragraphs B–3, B–4, and section D are observed.

2. *Bad debts.* Bad debts, including losses (whether actual or estimated) arising from uncollectible customers' accounts and other claims, related costs, and related legal costs, are unallowable.

3. *Bidding or proposal costs.* Bidding or proposal costs are the immediate costs of preparing bids or proposals on potential Government and non-Government contracts or projects or applications for financial assistance under Federal grant and contract programs, including development of scientific, engineering and cost data necessary to support the institution's bids, proposals or applications. Bidding costs of the current accounting period are allowable as part of the indirect cost pool. Costs of past accounting periods are unallowable. Bidding costs do not include any of those costs described in section G–16 and G–30.

4. *Bonding costs.* (a) Bonding costs arise when the Government requires assurance against financial loss to itself or others by reason of the act or default of the grantee/contractor. They arise also in instances where the grantee/contractor requires similar assurance. Included are such bonds as bid, performance, payment, advance payment, infringement, and fidelity bonds.

(b) Costs of bonding required pursuant to the terms of the grant/contract are allowable.

(c) Costs of bonding required by the grantee/contractor in the general conduct of its operations are allowable to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

5. *Civil defense costs.* (a) Civil defense costs are those incurred in planning for, and the protection of life and property against, the possible effects of enemy attack. Reasonable costs of civil defense measures (including costs in excess of normal plant protection costs, first-aid training and supplies, fire fighting training and equipment, posting of additional exit notices and directions, and other approved civil defense measures) undertaken on the institution's premises pursuant to suggestions or requirements of civil defense authorities are allowable when allocated to all work of the institution.

(b) Costs of capital assets under (a) above are allowable through depreciation or use charges in accordance with G–10.

(c) Contributions to local civil defense funds and projects are unallowable.

6. *Compensation for personal services—*(a) *Definition.* Compensation for personal services includes all remuneration paid currently or accrued in whatever form and whether paid immediately or deferred for services rendered by employees of the institution during the period of grant/contract performance. It includes, but is not limited to salary, wages, directors' and executive committee members' fees, bonuses, incentive awards, employee insurance, fringe benefits, and contributions to pension, annuity, and management employee incentive compensation plans.

(b) *Allowability.* Except as otherwise specifically provided in this subsection, the costs of compensation for personal services are to be treated as allowable to the extent that:

(1) Compensation is paid in accordance with policy, programs, and procedures that effectively relate individual compensation to the individual's contribution to the performance of grant or contract work, result in internally consistent treatment of employees in like situations, and effectively relate compensation paid within the organization to that paid for similar services outside the organization;

(2) Total compensation of individual employees is reasonable for the services rendered; and

(3) Costs are not in excess of those costs which are allowable by the Internal Revenue Code and regulations thereunder.

(c) *Reasonableness.* (1) When the institution is predominantly engaged in activities other than those sponsored by the Federal Government, compensation for employees on federally sponsored work will be considered reasonable to the extent that it is consistent with that paid for similar work in the institution's other activities;

(2) When the institution is predominantly engaged in federally sponsored activities, and in cases where the kind of employees required for the federally sponsored activities are not found in the institution's other activities, compensation for employees on federally sponsored work will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor markets in which the institution competes for the kind of employees involved.

(d) *Review and approval of compensation of individual employees.* In determining the reasonableness of compensation, the compensation of each individual employee normally need not be subject to review and approval. Reviews and approvals of individuals need be made only in those cases in which a general review reveals amounts or types of compensation which appear unreasonable or otherwise out of line.

(e) *Special considerations in determining allowability.* Certain conditions require special consideration and possible limitation as to allowability for grant and contract cost purposes where amounts appear excessive. Among such conditions are the following:

(1) Compensation to share holders, members, trustees, directors, associates, officers or members of the immediate families thereof, or to persons who are contractually committed to acquire a substantial financial interest in the enterprise. Determination should be made that such compensation is reasonable for the actual personal services rendered rather than a distribution of earnings in excess of costs.

(2) Any change in an institution's compensation policy resulting in a substantial increase in the institution's level of compensation, particularly when it was concurrent with an increase in the ratio of Government awards to other business, or any change in the treatment of allowability of specific types of compensation due to changes in Government policy.

(3) The institution's activities are such that its compensation levels are not subject to the restraints normally occurring in the conduct of competitive business.

(f) Notwithstanding any other provisions of this subsection, costs of compensation are not allowable to the extent that they result from provisions of labor-management agreements that, as applied to work in the performance of Government grants or contracts are determined to be unreasonable either because they are unwarranted by the character and circumstances of the work or because they are discriminatory against the Government. The application of the provisions of a labor-management agreement designed to apply to a given set of circumstances and conditions of employment (for example, work involving extremely hazardous activities or work not requiring recurrent use of overtime) is unwarranted when applied to a Government grant or contract involving significantly different circumstances and conditions of employment, (for example, work involving less hazardous activities or work continually requiring use of overtime). It is discriminatory against the Government if its results in individual personnel compensation (in whatever form or name) in excess of that being paid for similar non-Government work under comparable circumstances. Disallowance of costs will not be made under this subparagraph unless:

(1) The institution has been permitted an opportunity to justify the costs; and

(2) Due consideration has been given to whether there are unusual conditions pertaining to the Government work which impose burdens, hardships, or hazards on the institution's employees, for which compensation that might otherwise appear unreasonable is required to attract and hold necessary personnel.

(g)(1) In addition to the general requirements set forth in (a) through (f) of this subsection, certain forms of compensation are subject to further requirements as specified in (2) through (9) below.

(2) *Salaries and wages.* Salaries and wages for current services include gross compensation paid to employees in the form of cash, products, or services, and are allowable. However, see G.25 as it relates to compensation for overtime.

(3) *Incentive compensation.* Incentive compensation to employees based on cost reduction, or efficient performance, suggestion awards, safety awards, etc. are allowable to the extent that the overall compensation is determined to be reasonable and such costs are paid or accrued pursuant to an agreement entered into in good faith between the institution and the employees before the services were rendered, or pursuant to an established plan followed by the institution to consistently as to imply, in effect, an agreement to make such payment. Awards, and incentive compensation when deferred are allowable to the extent provided in (4) below.

(4) *Deferred compensation.* (a) As used herein, deferred compensation includes all remuneration, in whatever form, for which the employee is not paid until after the lapse of a stated period of years or the occurrence of other events as provided in the plans, except that it does not include normal end of accounting period accruals for regular salaries and wages. It includes (i) contributions to pension and annuity plans, (ii) contributions to disability, withdrawal, insurance, survivorship, and similar benefit plans, and (iii) other deferred compensation.

(b) Deferred compensation is allowable to the extent that (i) except for past service pension and retirement costs, it is for services rendered during the grant/contract period; (ii) it is, together with all other compensation paid to the employee, reasonable in amount; (iii) it is paid pursuant to an agreement entered into in good faith between the institution and its employees before the services are rendered, or pursuant to an established plan followed by the institution so consistently as to imply, in effect, an agreement to make such payments; (iv) the benefits of the plan are vested in the employees or their designated beneficiaries and no part of the deferred compensation reverts to the employer institution; (v) in the case of past service pension costs, it is amortized over a period of ten years or more; and (vi) for a plan which is subject to approval by the Internal Revenue Service, it falls within the criteria and standards of the Internal Revenue Code and the regulations of the Internal Revenue Service.

(c) In determining the cost of deferred compensation allowable under the grant or contract, appropriate adjustments shall be made for credits or gains, including those arising out of both normal and abnormal employee turnover, or any other contingencies that can result in a forfeiture by employees of such deferred compensation. Adjustments shall be made only for forfeitures which directly or indirectly inure to the benefit of the institution; forfeitures which inure to the benefits of other employees covered by a deferred compensation plan with no reduction in the institution's costs will not normally give rise to an adjustment in grant/contract costs. Adjustments for normal employee turnover shall be based on the institution's experience and on foreseeable prospects, and shall be reflected in the amount of cost currently allowable. Such adjustments will be unnecessary to the extent that the institution can demonstrate that its contributions take into account normal forfeitures. Adjustments for possible future abnormal forfeitures shall be effected according to the following rules:

(i) Abnormal forfeitures that are foreseeable and which can be currently evaluated with reasonable accuracy, by actuarial or other sound computation shall be reflected by an adjustment of current costs otherwise allowable; and

(ii) Abnormal forfeitures, not within (i) above, may be made the subject of agreement between the Government and the institution either as to an equitable adjustment or a method of determining such adjustment.

(d) In determining whether deferred compensation is for services rendered during the agreement period or is for future services, consideration shall be given to conditions imposed upon eventual payment, such as requirements of continued employment, consultation after retirement, and covenants not to compete.

(5) *Fringe benefits.* Fringe benefits are allowances and services provided by the institution to its employees as compensation in addition to regular wages and salaries. Costs of fringe benefits, such as pay for vacations, holidays, sick leave, military leave, employee insurance, and supplemental unemployment benefit plans are allowable to the extent required by law, employer-employee agreement, or an established policy of the institution.

(6) Severance pay. See G.40.

(7) Training and education expenses. See G.44.

(8) *Location allowances.* (a) "Location allowances," sometimes called "supplemental pay" or "incentive pay," are compensation in addition to normal wages or salaries and are paid by institutions to especially compensate or induce employees to undertake or continue work at locations which may be isolated or in an unfavorable environment. Location allowances include extra wage or salary payments in the form of station allowances, extended per diem, or mileage payments for daily commuting; they also include such benefits as institution-furnished housing. Payment of location allowances shall be allowed as costs under grants and cost-reimbursement type contracts, or recognized in pricing fixed-price type contracts, only with prior approval in writing from the awarding agency and only where and so long as the isolation or unfavorable environment of the site makes such payments necessary to the accomplishment of the work without unacceptable delays. Whether the site is so isolated, or its environment is so unfavorable, as to require location allowances is to be determined in the light of (a) its location and climate; (b) the availability and adequacy of housing within reasonable commuting distance; and (c) the availability and adequacy of educational, recreational, medical, and hospital facilities. The extent to which compensation includes location allowances is to be determined by comparing it with (a) the institution's normal compensation policy, including pay scales at its principal operating locations; (b) pay scales of other organizations and concerns operating at or near the site; and (c) compensation paid by other concerns within the same field for similar services elsewhere.

(b) Locations for which location allowances are paid shall be reviewed at

least once a year to determine whether such allowances should continue to be allowed.

(9) *Support of salaries and wages.* (a) Direct charges for professionals must be supported by either:

(i) An adequate appointment and workload distribution system, accompanied by monthly reviews performed by responsible change in workload distribution of each professional (i.e., an exception reporting system) or

(ii) A monthly after-the-fact certification system which will require persons in supervisory positions having firsthand knowledge of the services performed to report the distribution of effort (i.e., a positive reporting system). Such reports must account for the *total* salaried effort of the persons covered. Consequently, a system which provides for the reporting only of effort applicable to federally sponsored activities is not acceptable.

(b) Direct charges for salaries and wages of nonprofessionals will be supported by time and attendance and payroll distribution records.

(c) Allowable indirect personal services costs will be supported by the institution's accounting system maintained in accordance with generally accepted institutional practices. Where a comprehensive accounting system does not exist, the institution should make periodic surveys no less frequently than annually to support the indirect personal services costs for inclusion in the overhead pool. Such supporting documentation must be retained for subsequent review by Government representatives.

7. *Capital expenditures.* The costs of equipment, buildings, and repairs which materially increase the value or useful life of buildings or equipment, are unallowable except as provided for in the grant/contract.

8. *Contingencies.* (a) A contingency is a possible future event or condition arising from presently known or unknown causes, the outcome of which is indeterminable at the present time.

(b) In historical costing, contingencies are not normally present since such costing deals with costs which have been incurred and recorded on the institution's books. Accordingly, contingencies are generally unallowable for historical costing purposes. However, in some cases, as for example, terminations, a contingency factor may be recognized which is applicable to a past period to give recognition to minor unsettled factors in the interest of expeditious settlement.

(c) In connection with estimates of future costs, contingencies fall into two categories:

(1) Those which may arise from presently known and existing conditions, the effects of which are foreseeable within reasonable limits of accuracy; e.g., pension funds, sick leave, and vacation accruals, etc. In such situations where they exist, contingencies of this category are to be included in the estimates of future cost so as to provide the best estimate of performance costs; and

(2) Those which may arise from presently known or unknown conditions, the effect of which cannot be measured so precisely as to provide equitable results to the institution and to the Government; e.g., results of pending litigation, and other general business risks. Contingencies of this category are to be excluded from cost estimates under the several items of cost, but should be disclosed separately, including the basis upon which the contingency is computed in order to facilitate the negotiation of appropriate contractual coverage (see, for example, G-17, G-21, and G-40).

9. *Contributions and donations.* (a) Contributions and donations by the grantee/contractor are unallowable.

(b) The value of donated services or goods provided by individual volunteers or members of volunteer organizations is not an allowable cost; however, the fair market value of donated services or goods utilized in the performance of a direct cost activity as defined in C.1 and C.2 shall be considered in the determination of the indirect cost rate(s) and, accordingly, shall be allocated a proportionate share of indirect cost.

10. *Depreciation and use allowances.* (a) Institutions may be compensated for the use of buildings, capital improvements and usable equipment on hand through depreciation or use allowances. Depreciation is a charge to current operations which distributes the cost of a tangible capital asset, less estimated residual value, over the estimated useful life of the asset in a systematic and logical manner. It does not involve a process of valuation. Useful life has reference to the prospective period of economic usefulness in the particular institution's operations as distinguished from physical life. Use allowances are the means of allowing compensation when depreciation or other equivalent costs are not considered.

(b) Depreciation or a use allowance on assets donated by third parties is allowable. However, any limitations on the amount of depreciation which would have applied to the donor as a result of restrictions contained in this Section shall also apply to the recipient organization.

(c) Due consideration will be given to Government-furnished facilities utilized by the institution when computing use allowances and/or depreciation if the Government-furnished facilities are material in amount. Computation of the use allowance and/or depreciation will exclude both the cost or any portion of the cost of grounds, buildings and equipment borne by or donated by the Federal Government, irrespective of where title was originally vested or where it presently resides, and secondly, the cost of grounds. Capital expenditures for land improvements (paved areas, fences, streets, sidewalks, utility conduits, and similar improvements not already included in the cost of buildings) are allowable provided the systematic amortization of such capital expenditures has been provided in the institution's books of account, based on reasonable determinations of the probable useful lives of the individual items involved, and the share allocated to the grant or contract is developed from the amount thus amortized for the base period involved.

(d) Normal depreciation on an institution's plant, equipment, and other capital facilities, except as excluded by (d) below, is an allowable element of cost provided that the amount thereof is computed:

(1) Upon a property cost basis which could have been used by the institution for Federal Income Tax purposes, had such institution been subject to the payment of income tax; and

(2) By the consistent application to the assets concerned of any generally accepted accounting method, and subject to the limitations of the Internal Revenue Code of 1954 as amended, including—

(i) The straight line method;

(ii) The declining balance method, using a rate not exceeding twice the rate which would have been used had the annual allowance been computed under the method described in (i) above;

(iii) The sum-of-the-years-digits method; and

(iv) Any other consistent method productive of an annual allowance which, when added to all allowances for the period commencing with the use of the property and including the current year, does not during the first two-thirds of the useful life of the property exceed the total of such allowances which would have been used had such allowances been computed under the method described in (ii) above.

(v) Where the depreciation method is followed, adequate property records must be maintained. The period of useful service (service life) established in each case for usable capital assets must be determined on a realistic basis which takes into consideration such factors as type of construction, nature of the equipment used, technological developments in the particular area, and the renewal and replacement policies followed for the individual items or classes of assets involved. Where the depreciation method is introduced for application to assets acquired in prior years, the annual charges therefrom must not exceed the amounts that would have resulted had the depreciation method been in effect from the date of acquisition of such assets.

(vi) Depreciation on idle or excess facilities shall not be allowed except on such facilities as are reasonably necessary for standby purposes. (See G. 13.)

(vii) Where an institution elects to go on a depreciation basis for a particular class of assets, no depreciation, rental or use charge may be allowed on any such assets that would be viewed as fully depreciated. *Provided, however,* that reasonable use charges may be negotiated for any such assets if warranted after taking into consideration the cost of the facility or item involved, the estimated useful life remaining at time of negotiation, the actual replacement policy followed in the light of service lives used for calculating depreciation, the effect of any increased maintenance charges or decreased efficiency due to age, and any other factors pertinent to the utilization of the facility or item for the purpose contemplated.

(viii) Where the use allowance method is followed, the use allowance for buildings and improvements will be computed at an annual rate not exceeding 2 percent of acquisition cost. The use allowance for equipment will be computed at an annual rate not exceeding 6⅔ percent of acquisition cost of usable equipment in those cases where the institution maintains current records with

respect to such equipment on hand. Where the institution's records reflect only the cost (actual or estimated) of the original complement of equipment, the use allowance will be computed at an annual rate not exceeding 10 percent of such cost. Original complement for this purpose means the complement of equipment initially placed in buildings to perform the functions currently being performed in such buildings; however, where a permanent change in the function of a building takes place, a redetermination of the original complement of equipment may be made at that time to establish a new original complement. In those cases where no equipment records are maintained, the institution will justify a reasonable estimate of the acquisition cost of usable equipment which may be used to compute the use allowance at an annual rate not exceeding 6⅔ percent of such estimate.

(ix) Depreciation and/or use charges should usually be allocated to all activities as an indirect cost.

11. *Employee morale, health, welfare costs, and credits.* (a) Employee morale, health, and welfare activities are those services or benefits provided by the institution to its employees to improve working conditions, employer-employee relations, employee morale, and employee performance. Such activities include house publications, health or first-aid clinics, recreation, employee counseling services and, for the purpose of this paragraph, food and dormitory services. Food and dormitory services include operating or furnishing facilities for cafeterias, dining rooms, canteens, lunch wagons, vending machines, living accommodations, or similar types of services for the institution's employees at or near its facilities.

(b) Except as limited by (c) below, the aggregate of costs incurred on account of all activities mentioned in (a) above, less income generated by all such activities is allowable to the extent that the net amount is reasonable.

(c) Losses from the operation of food and dormitory services may be included as cost incurred under (b) above, only if the institution's objective is to operate such services on a break-even basis. Losses sustained because food services or lodging accommodations are furnished without charge or at prices or rates which obviously would not be conducive to accomplishment of the above objective, are not allowable, except that a loss may be allowed to the extent the institution can demonstrate that unusual circumstances exist (e.g., (1) where the institution must provide food or dormitory services at remote locations where adequate commercial facilities are not reasonably available or (ii) where it is necessary to operate a facility at a lower volume than the facility could economically support) such that, even with efficient management, operation of the services on a break-even basis would require charging inordinately high prices or prices or rates higher than those charged by commercial establishments offering the same services in the same geographical areas.

(d) In those situations where the institution has an arrangement authorizing an employee association to provide or operate a service such as vending machines in the institution's plant, and retain the profits derived therefrom, such profits shall be treated in the same manner as if the institution were providing the service (but see (e)).

(e) Contributions by the institution to an employee organization, including funds set over from vending machine receipts or similar sources, may be included as cost incurred under (b) above only to the extent that the institution demonstrates that an equivalent amount of the costs incurred by the employee organization would be allowable if incurred by the institution directly.

12. *Entertainment costs.* Costs of amusement, diversion, social activities, ceremonials, and incidental costs relating thereto, such as meals, lodging, rentals, transportation, and gratuities, are unallowable (but see G-11 and G-43).

13. *Excess facility costs.* (a) As used in this paragraph, the words and phrases defined in this subparagraph (a) shall have the meanings set forth below.

(1) Facilities means plant or any portion thereof (inclusive of land integral to the operation); equipment indivdually or collectively; or any other tangible capital asset, wherever located, and whether owned or leased by the institution.

(2) Idle Facilities means completely unused facilities that are excess to the institution's current needs.

(3) Idle Capacity means the unused capacity of partially used facilities. It is the difference between that which a facility could achieve under 100 percent operating time on a one shift basis less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materiels, and other normal delays, and the extent to which the facility was actually used to meet demands during the accounting period. (A multiple shift basis may be used if it can be shown that this amount of usage could normally be expected for the type of facility involved.)

(4) Costs of idle facilities or idle capacity are costs such as maintenance, repair, housing, rent, and other related costs, e.g., property taxes, insurance, and depreciation.

(b) The costs of idle facilities are unallowable except to the extent that:

(i) They are necessary to meet fluctuations in workload; or

(ii) Although not necessary to meet fluctuations in workload, they were necessary when acquired and are now idle because of changes in program requirements, grantee/ contractor efforts to produce more economically, reorganization, termination, or other causes which could not have been reasonably foreseen.

Under the exception stated in (ii) of this subparagraph (b), costs of idle facilities are allowable for a reasonable period of time, ordinarily not to exceed 1 year, depending upon the initiative taken to use, lease, or dispose of such facilities (but see G.42(b) and (e)).

(c) The costs of idle capacity are normal costs of doing business and are a factor in the normal fluctuations of usage or overhead rates from period to period. Such costs are allowable, provided the capacity is reasonably anticipated to be necessary or was originally reasonable and is not subject to reduction or elimination by subletting, renting, or sale, in accordance with sound business, economics, or security practices. Widespread idle capacity throughout an entire plant or among a group of assets having substantially the same function may be idle facilities.

14. *Fines and penalties.* Costs of fines and penalties resulting from violations of, or failure of the institution to comply with, Federal, State, and local laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of the grant or contract instructions in writing from the awarding agency.

15. *Fringe benefits.* (See G.–6–(g)–(5.)

16. *Independent research and development.* (a) An institution's independent research and development (I.R. & D.) is that research and development which is not sponsored by the Government or a non-Government organization or agency under a grant/ contract or other arrangement.

(b) Basic research, for the purpose of this document, is that type of research which is directed toward increase of knowledge within a particular discipline. In such research, the primary aim of the investigator is a fuller knowledge or understanding of the subject under study, rather than any practical application thereof. Applied research, for the purpose of this document consists of that type of effort which (1) is normally derived from the results of basic research, but may not be severable from the related basic research, (2) attempts to determine and expand the potentialities of new scientific discoveries or improvements in technology, materiels, processes, methods, devices, and techniques, and (3) attempts to "advance the state of the art." Applied research, does not include any such efforts when their principal aim is the design, development, or test of specific articles or services to be offered for sale, which are within the definition of the term development as defined in (c) below. Census research, for the purpose of this document, is that type of activity devoted to the compilation and interpretation of statistical and other analytical information acquired through survey (e.g., interview, circularization of questionnaires), observations or from books, treatises, articles or other sources relative to specifically defined activities, occurrences or conditions for the purpose of accomplishing some scientific end.

(c) "Development" is the systematic use of scientific knowledge which is directed toward the production of, or improvements in, useful products to meet specific performance requirements, but exclusive of manufacturing and production engineering.

(d) Independent research and development will be treated in a manner consistent with the treatment of sponsored research and development. Accordingly, an institution's I.R. & D. shall be allocated in proportionate share of indirect costs on the same basis that indirect costs are allocated to sponsored research and development.

(e) The cost of an institution's I.R. & D. including its proportionate share of indirect costs, is unallowable.

17. *Insurance and indemnification.* (a) Insurance includes insurance which the institution is required to carry, or which is approved, under the terms of the grant or contract and any other insurance which the institution maintains in connection with the general conduct of its business.

(1) Costs of insurance required or approved, and maintained, pursuant to the grant or contract are allowable.

(2) Costs of other insurance maintained by the institution in connection with the general conduct of its business are allowable subject to the following limitations:

(a) Types and extent of coverage shall be in accordance with sound business practice and the rates and premiums shall be reasonable under the circumstances;

(b) Costs allowed for business interruption or other similar insurance shall be limited to exclude coverage of profit;

(c) Costs of insurance or of any provision for a reserve covering the risk of loss of or damage to Government property are allowable only to the extent that the institution is liable for such loss or damage and such insurance or reserve does not cover loss or damage which results from willful misconduct or lack of good faith on the part of any of the institution's trustees, directors or officers, or other equivalent representatives, who have supervision or direction of (i) all or substantially all of the institution's business, or (ii) all or substantially all of the institution's operations at any one separate location in which the grant or contract is being performed, or who are specifically identified as the project director in the project or otherwise primarily responsible for the direction and/or execution of the project supported by the grant or contract.

(d) Provisions for a reserve under an approved self-insurance program are allowable to the extent that types of coverage, extent of coverage, and the rates and premiums would have been allowed had insurance been purchased to cover the risks; and

(e) Costs of insurance on the lives of trustees, officers, or other employees holding positions of similar responsibilities are allowable only to the extent that the insurance represents additional compensation. (See G–6).

(3) Actual losses which could have been covered by permissible insurance (through an approved self-insurance program or otherwise) are unallowable unless expressly provided for in the grant or contract, except:

(a) Costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound business practice, are allowable; and

(b) Minor losses not covered by insurance, such as spoilage, breakage, and disappearance of supplies, which occur in the ordinary course of doing business, are allowable.

(c) Indemnification includes securing the institution against liabilities to third persons and any other loss or damage not compensated by insurance or otherwise. The Government is obligated to indemnify the institution only to the extent expressly provided in (a)(3) above.

18. *Interest and other financial costs.* (a) Costs incurred for interest on borrowed capital or temporary use of endowment funds, however represented, are unallowable.

(b) Costs of organized fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions, are unallowable.

(c) Costs of investment counsel and staff and similar expenses incurred solely to enhance income from investments are unallowable.

(d) Where substantial effort or time is devoted to fund raising and investment activities as described in (b) and (c) in relation to other functions of an institution, such activities shall be considered as a major activity of the institution and shall be allocated its share of indirect costs in accordance with section D. (See also C–2.)

19. *Labor relations costs.* Costs incurred in maintaining satisfactory relations between the institution and its employees, including costs of labor management committees, employee publications, and other related activities, are allowable.

20. *Losses on other grants or contracts.* Any excess of costs over income on any grant or contract is unallowable as a cost of any other grant or contract.

21. *Maintenance and repair costs.* (a) Costs necessary for the upkeep of property (including Government property unless otherwise provided for), which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are to be treated as follows (but see G–10):

(1) Normal maintenance and repair costs are allowable:

(2) Extraordinary maintenance and repair costs are allowable provided such are allocated to the periods to which applicable for purposes of determining grant or contract costs.

(b) Expenditures for plant and equipment, including rehabilitation thereof, which, according to generally accepted accounting principles as applied under the institution's established policy, should be capitalized and subjected to depreciation, are allowable only on a depreciation basis.

22. *Materiels costs.* (a) The cost of consumable supplies, serum, drugs, fabricated parts, and other materiels necessary to carry out the objectives of a grant or contract, whether purchased outside or manufactured by the institution are allowable subject to the provisions (b) through (e) below. The cost may include such collateral items as inbound transportation and intransit insurance.

In computing these costs consideration will be given to reasonable overruns, spoilage, or defective work if consistent with the nature of the project being performed and the recognized practice of the industry.

(b) Costs of materiel shall be suitably adjusted for applicable portions of income and other credits, including available trade and cash discounts, refunds, rebates, allowances, and credits for scrap and salvage and materiel returned to vendors. Such income and other credits shall either be credited directly to the cost of the materiel involved or be allocated (as credits) to indirect costs. However, where the institution can demonstrate that failure to take cash discounts was due to reasonable circumstances, such lost discounts need not be so credited.

(c) Reasonable adjustments arising from differences between periodic physical inventories and book inventories may be included in arriving at costs, provided such adjustments relate to the period of performance of the grant or contract.

(d) When the materiels are purchased specifically for and identifiable solely with performance under a grant or contract, the actual purchase cost thereof should be charged to that grant or contract. If materiel is issued from stores, any generally recognized method of pricing such materiel is acceptable if that method is consistently applied and the results are equitable. When estimates of materiel costs to be incurred in the future are required, either current market price or anticipated acquisition cost may be used, but the basis of pricing must be disclosed.

(e) Allowance for all materiels, supplies and services which are sold or transferred between any division, subsidiary or affiliate of the institution under a common control shall be on the basis of cost incurred in accordance with these principles, except that when it is the established practice of the transferring organization to price interorganization transfers of materiels, supplies and services at other than cost for non-Government work of the institution or any division, subsidiary or affiliate of the institution under a common control, allowance may be at a price when:

(1) It is or is based on an "established catalog or market price of commercial items sold in substantial quantities to the general public;" or

(2) It is the result of "adequate price competition" and is the price at which an award was made to the affiliated organization after obtaining quotations on an equal basis from such organization and one or more outside sources which normally produce the item or its equivalent in significant quantity.

Provided, that in either case:

(1) The price is not in excess of the transferor's current sales price to his most favored customer (including any division, subsidiary, or affiliate of the institution under a common control) for a like quantity under comparable conditions, and

(2) The price is not determined to be unreasonable by the awarding agency.

The price determined in accordance with (1) above should be adjusted, when appropriate, to reflect the quantities being procured and may be adjusted upward or downward to reflect the actual cost of any modifications necessary because of grant or contract requirements.

23. *Organization costs.* Expenditures, such as incorporation fees, attorney's fees, accountant's fees, broker's fees, fees to promoters and organizers, in connection with (a) organization or reorganization of a business, or (b) raising capital, are unallowable unless specified otherwise in the grant or contract.

24. *Other business expenses.* Included in this item are such recurring expenses as preparation and publication of reports to members and trustees; preparation and submission of required reports and forms to taxing and other regulatory bodies; and incidental costs of director and committee meetings. The above and similar costs are allowable when allocated on an equitable basis.

25. *Overtime, extra-pay shift and multishift premiums.* Premiums for overtime, extra-pay shifts, and multishift work are allowable only to the extent approved by the awarding agency except:

(a) When necessary to cope with emergencies, such as those resulting from accidents, natural disasters, breakdowns of production equipment, or occasional production bottlenecks of a sporadic nature;

(b) When by indirect labor employees such as those performing duties in connection with administration, protection, transportation, maintenance, standby plant protection, operation of utilities, or accounting;

(c) In the performance of tests, laboratory procedures, or other similar operations which are continuous in nature and cannot reasonably be interrupted or otherwise completed; or

(d) When lower overall cost to the Government will result.

Overtime premiums and shift premiums may be considered proper for approval when determined in writing by the awarding agency that approval:

(a) Is necessary to meet delivery or performance schedules, and such schedules are determined to be extended to the maximum consistent with essential program objectives;

(b) Is necessary to make up for delays which are beyond the control and without the fault or negligence of the institution;

(c) Is necessary to eliminate foreseeable bottlenecks of an extended nature which cannot be eliminated in any other way.

Approvals should ordinarily be prospective, but may be retroactive where justified by the circumstances. Such approvals may be for an individual grant or contract project, or program, or for a division, department, or branch, as most practicable.

Overtime for which overtime premiums would be at Government expense should not be approved under an award where the institution is already obligated, without the right to additional compensation, to meet the required delivery date.

Where overtime premiums or shift premiums are being paid at Government expense in connection with the performance of Government grant or contract the continued need therefor should be subject to periodic review by the awarding agency.

26. *Patent and copyright costs.* Costs of preparing disclosures, reports, and other documents required by the grant/contract and of searching the art to the extent necessary to make such disclosures, are allowable. In accordance with the conditions of the grant or contract relating to patents or copyrights, costs of preparing documents and any other costs, in connection with the filing of a patent application or copyright where title is conveyed to the Government, are allowable. However, similar costs incurred in connection with patents or copyrights where title is not conveyed to the Government are unallowable. (See G–39.)

27. *Pension plans.* (See G–6(g)–(4).)

28. *Plant protection costs.* Costs of items such as (a) wages, uniforms, and equipment of personnel engaged in plant protection, (b) depreciation on plant protection capital assets, and (c) necessary expenses to comply with security requirements are allowable.

29. *Plant reconversion costs.* Plant reconversion costs are those incurred in the restoration or rehabilitation of the institution's facilities to approximately the same condition existing immediately prior to the commencement of the grant or contract work, fair wear and tear excepted. Reconversion costs are unallowable except for the cost of removing Government property and the restoration or rehabilitation costs caused by such removal. However, in special circumstances where equity so dictates, additional costs may be allowed to the extent agreed upon in writing before the costs are incurred. Whenever such costs are given consideration, care should be exercised to avoid duplication through allowance as contingencies, as additional profit or fee, or in other grants or contracts.

30. *Preaward costs.* Preaward costs are those incurred prior to the effective date of the grant or contract directly pursuant to the negotiation and in anticipation of the award of the grant or contract where such incurrence is necessary to comply with the proposed delivery schedule or period of performance. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the award and only with the prior written approval of the awarding agency.

31. *Professional service cost—legal, accounting, scientific and other.* (a) Costs of professional services rendered by members of a particular profession who are not employees of the institution are allowable, subject to (b), (c) and (d) below, when reasonable in relation to the services rendered. (But see G–23.)

(b) Factors to be considered in determining the allowability of costs in a particular case include:

(1) The nature and scope of the service rendered in relation to the service required;

(2) The necessity of contracting for the service considering the institution's capability in the particular area;

(3) The past pattern of such costs, particularly in years prior to the award of Government work;

(4) The impact of Government work on the institution's business (i.e., what new problems have arisen);

(5) Whether the proportion of Government work to the institution's total business is such as to influence the institution in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Government grants/contracts;

(6) Whether the service can be performed more economically by employment rather than by contracting;

(7) The qualifications of the individual or concern rendering the service and the customary fees charged, especially on nongovernment grants/contracts;

(8) Adequacy of the contractual agreement for the service (e.g., description of the service, estimate of time required, rate of compensation; termination provisions).

(c) Retainer fees to be allowable must be reasonably supported by evidence of bona fide services available or rendered.

(d) Costs of legal, accounting, and consulting service, and related costs, incurred in connection with organization and reorganization, defense of anti-trust suits, and the prosecution of claims against the Government, are unallowable. Costs of legal, accounting, and consulting services, and related costs, incurred in connection with patent or copyright infringement litigation, are unallowable unless otherwise provided for in the grant or contract.

32. *Profits and losses on disposition of plant equipment, or other capital assets.* Profits or losses of any nature arising from the sale or exchange of plant, equipment, or other capital assets, including sale or exchange of either short- or long-term investments, shall be excluded in computing grant or contract costs.

33. *Public information services costs.* Public information services costs include the costs associated with promotions, public relations, pamphlets, news releases, and other forms of information services. Such costs are normally incurred to:

(a) Inform or instruct individuals, groups or the general public about health or social problems;

(b) Interest individuals or groups in participating in a service program of the institution;

(c) Provide stewardship reports to State and local Government agencies, benefactor foundations and associations, etc.;

(d) Appeal for funds;

(e) Disseminate the results of sponsored and non-sponsored research or other activity to the scientific community.

To the extent that the costs incurred for any of these purposes are identifiable with a particular cost objective they should be charged to the objective to which they relate.

If these costs are not identifiable with a particular cost objective, they should be allocated as indirect costs to all major activities of the institution except that costs related to fund-raising appeals are unallowable as costs of grants and contracts.

Public information service costs are unallowable as a direct cost of grants and contracts unless formally approved by the awarding agency.

34. *Publication and printing costs.* Publication costs include the costs of printing (including the processes of composition, platemaking, press work, binding and the end products produced by such processes), distribution, promotion, mailing and general handling.

Publication costs are unallowable as a direct cost of grants and contracts unless formally approved by the awarding agency.

35. *Rearrangement and alteration costs.* Costs incurred for ordinary or normal rearrangement and alteration of facilities are allowable. Special arrangement and alteration costs incurred specifically for the

project are allowable when written approval has been given in advance by the awarding agency.

36. *Recruitment costs.* (a) Subject to (b), (c), and (d) of this G–36, and provided that the size of the staff recruited and maintained is in keeping with workload requirements, costs of help-wanted advertising, operating costs of an employment office necessary to secure and maintain an adequate labor force, costs of operating an aptitude and educational testing program, travel costs of employees while engaged in recruiting personnel, and travel costs of applicants for interviews for prospective employement are allowable to the extent that such costs are incurred pursuant to a well managed recruitment program. Where the institution uses employment agencies, costs not in excess of standard commercial rates for such services are allowable.

(b) In publications, costs of help-wanted advertising that (1) includes color, (2) includes advertising materiel for other than recruitment purposes, or (3) is excessive in size (taking into consideration recruitment purposes for which intended and normal business practices in this respect) are unallowable.

(c) Costs of (1) help-wanted advertising and (2) excessive salaries, fringe benefits, and special emoluments that have been offered to prospective employees, designed to attract personnel from another institution performing as grantee or contractor to the Government, or in excess of the standard practices in comparable institutions, are unallowable.

(d) Where relocation costs incurred incident to recruitment of a new employee have been allowed either as an allocable direct or indirect cost and the newly hired employee resigns for reasons within his control within 12 months after hire, the institution shall be required to refund or credit such relocation costs to the Government.

37. *Relocation costs.* (a) Relocation costs, for the purpose of this document, are costs incident to the permanent change of duty assignment (for an indefinite period, or for a stated period of no less than 12 months) of an existing employee or upon recruitment of a new employee. These costs may include, but are not limited to cost of (i) transportation of the employee, members of his immediate family and his household and personal effects to the new location; (ii) finding a new home, such as advance trips by employees and spouses to locate living quarters and temporary lodging during the transition period; (iii) closing costs (i.e., brokerage fees, legal fees, appraisal fees, etc.), incident to the disposition of housing; (iv) other necessary and reasonable expenses normally incident to relocation, such as cost of cancelling an unexpired lease, disconnecting or reinstalling household appliances, and purchase of insurance against damages to personal property; (v) loss on sale of home; and (vi) acquisition of a home in a new location (i.e., brokerage fees, legal fees, appraisal fees, etc.).

(b) Subject to (c) below, relocation costs of the type covered in (a) (i), (ii), (iii), and (iv) above are allowable, provided (i) the move is for the benefit of the employer; (ii) reimbursement is in accordance with an established policy or practice consistently followed by the employer, and such policy or practice is designed to motivate employees to relocate promptly and economically; (iii) the costs are not otherwise unallowable under the provisions of G–36 or any other paragraph of this document and (iv) amounts to be reimbursed shall not exceed the employee's actual (or reasonably estimated) expenses.

(c) Costs otherwise allowable under (b) above are subject to the following additional provisions: (i) the transition period for incurrance of costs of the type covered in (a) (ii) above shall be kept to the minimum number of days necessary under the circumstances, but shall not, in any event, exceed a cumulative total of 30 days including advance trip time; and (ii) allowance for cost of the type covered in (a)(iii) above shall not exceed 8 percent of the sales price of the property sold. Costs of the type covered in (a) (iii) and (iv) above are allowable only in connection with the relocation of existing employees, and are not allowable for newly recruited employees.

(d) Costs of the type covered in (a) (v) and (vi) above are not allowable.

38. *Rental costs (including sale and leaseback of facilities).* (a) Rental costs of land, building, and equipment and other personal property are allowable if the rates are reasonable in light of such factors as rental costs of comparable facilities and market conditions in the area, the type, life expectancy, condition, and value of the facilities leased, options available, and other provisions of the rental agreement. Application of these factors, in situations where rentals are extensively used, may involve among other considerations, comparison of rental costs with the amount which the institution would have received had it owned the facilities.

(b) Charges in the nature of rent between plants, divisions, or organizations under common control are allowable to the extent such charges do not exceed the normal costs of ownership, such as depreciation, taxes, insurance, and maintenance: Provided, That no part of such costs shall duplicate any other allowed costs.

(c) Unless otherwise specifically provided in the grant or contract, rental costs specified in sale and leaseback agreements, incurred by institutions through selling plant facilities to investment organizations, such as insurance companies, associate institutions, or to private investors, and concurrently leasing back the same facilities, are allowable only to the extent that such rentals do not exceed the amount which the grantee/contractor would have received had it retained legal title to the facilities.

(d) Rentals for land, building and equipment and other personal property, owned by affiliated organizations including corporations or by stockholders, members, directors, trustees, officers or other key personnel of the institution or their families either directly or through corporations, trusts or other similar arrangements in which they hold a more than token interest are allowable only to the extent that such rentals do not exceed the amount the institution would have received had legal title to the facilities been vested in it.

(e) The allowability of rental costs under unexpired leases in connection with terminations is treated in G–42(e).

39. *Royalties and other costs for use of patents and copyrights.* (a) Royalties on a patent or copyright or amortization of the cost of acquiring by purchase a copyright, patent or rights thereto, necessary for the proper performance of the grant or contract applicable to grant products or processes, are allowable unless:

(1) The Government has a license or the right to free use of the patent;

(2) The patent or copyright has been adjudicated to be invalid, or has been administratively determined to be invalid;

(3) The patent or copyright is considered to be unenforceable; or

(4) The patent or copyright is expired.

(b) Special care should be exercised in determining reasonableness where the royalties may have been arrived at as a result of less than arm's-length bargaining; e.g.:

(1) Royalties paid to persons, including corporations, affiliated with the institution;

(2) Royalties paid to unaffiliated parties, including corporations, under an agreement entered into in contemplation that a Government grant or contract would be awarded; or

(3) Royalties paid under an agreement entered into after the award of the grant or contract.

(c) In any case involving a patent or copyright formerly owned by the institution, the amount of royalty allowed should not exceed the cost which would have been allowed had the institution retained title thereto.

40. *Severance pay.* (a) Severance pay, also commonly referred to as dismissal wages, is a payment in addition to regular salaries and wages, by institutions to workers whose employment is being terminated. Costs of severance pay are allowable only to the extent that, in each case, it is required by (1) law, (2) employer-employee agreement, (3) established policy that constitutes, in effect, an implied agreement on the institution's part, or (4) circumstance of the particular employment.

(b) Costs of severance payments are divided into two categories as follows:

(1) Actual normal turnover severance payments shall be allocated to all work performed in the institution's facilities; or, where the institution provides for accrual of pay for normal severances, such method will be acceptable if the amount of the accrual is reasonable in light of payments actually made for normal severances over a representative past period, and if amounts accrued are allocated to all work performed in the institution's facilities; and

(2) Abnormal or mass severance pay is of such a conjectural nature that measurement of costs by means of an accrual will not achieve equity to both parties. Thus, accruals for this purpose are not allowable. However, the Government recognizes its obligation to participate, to the extent of its fair share, in any specific payment. Thus, allowability will be considered on a case-by-case basis in the event of occurrence.

41. *Taxes.* (a) Taxes are certain charges levied by Federal, State, or local governments. They do not include fines and penalties except as otherwise provided herein. In general, taxes which the institution is required to pay and which are paid or accrued in accordance with generally accepted accounting principles are allowable, except for:

(1) Federal income taxes and similar levies against income of the institution derived from activities unrelated to the project supported by the grant or contract;

(2) Taxes in connection with financing, refinancing, or refunding operations (see G–18);

(3) Taxes from which exemptions are available to the institution directly or available to the institution based on an exemption afforded the Government except when the awarding agency determines that the administrative burden incident to obtaining the exemption outweighs the corresponding benefits accruing to the Government;

(4) Special assessments on land which represent capital improvements; and

(5) Taxes on any category of property which is used solely in connection with work other than on Government grants or contracts. (Taxes on property used solely in connection with either non-Government or Government work should be considered directly applicable to the respective category of work unless the amounts involved are insignificant or comparable results would otherwise be obtained.)

(b) Taxes otherwise allowable under paragraph (a) of this section, but upon which a claim of illegality or erroneous assessment exists, are allowable provided the institution, prior to payment of such taxes:

(1) Promptly requests instructions from the awarding agency concerning such taxes, and

(2) Takes all action directed by the awarding agency arising out of subparagraph (1) of this paragraph or an independent decision of the Government as to the existence of a claim of illegality or erroneous assessment, including cooperation with and for the benefit of the Government to (i) determine the legality of such assessment, or (ii) secure a refund of such taxes. Reasonable costs of any such action undertaken by the institution at the direction or with the concurrence of the awarding agency are allowable. Interest and penalties incurred by an institution by reason of the nonpayment of any tax at the direction of the awarding agency or by reason of the failure of the awarding agency to issue timely direction after prompt request therefor, are also allowable.

(c) Any refund of taxes, interest, or penalties, and any payment to the institution of interest thereon, attributable to taxes, interest, or penalties which were allowed as project costs, shall be credited or paid to the Government in the manner directed by the Government, provided any interest actually paid or credited to an institution incident to a refund of tax, interest or penalty shall be paid or credited to the Government only to the extent that such interest accrued over the period during which the institution had been reimbursed by the Government for the taxes, interest or penalties.

42. *Termination costs.* Grants and contracts terminations generally give rise to the incurrence of costs, or the need for special treatment of costs, which would not have arisen had the project not been terminated. Cost principles covering these items are set forth below. They are to be used in conjunction with the remainder of this document in termination situations.

(a) *Common items.* The cost of items reasonably usable on the institution's other work shall not be allowable unless the institution submits evidence that it could not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the institution, the awarding agency should consider the institution's plans and orders for current and scheduled production. Contemporaneous purchases of common items by the institution shall be regarded as evidence that such items are reasonably usable on the institution's other work. Any acceptance of common items as allocable to the terminated portion of the project should be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirements of other work.

(b) *Costs continuing after termination.* If in a particular case, despite all reasonable efforts by the institution, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in this document, except that any such costs continuing after termination due to the negligent or willful failure of the institution to discontinue such costs shall be considered unallowable.

(c) *Initial costs.* Initial costs, including starting load and preparatory costs, are allowable, subject to the following:

(1) Starting load costs are costs of a nonrecurring nature arising in the early stages of operation, investigation or production and not fully absorbed because of the termination. Such costs may include the cost of labor and materiel, and related indirect cost attributable to such factors as:

(a) Excessive spoilage resulting from inexperienced labor;

(b) Idle time and subnormal production occasioned by testing and changing methods of processing;

(c) Employee training; and

(d) Unfamiliarity or lack of experience with the product, materiels, manufacturing processes, and techniques.

(2) Preparatory costs are costs incurred in preparing to perform the terminated project including costs of initial plant rearrangement and alterations, management and personnel organization, production planning and similar activities, but excluding special machinery and equipment and starting load costs.

(3) If initial costs are claimed and have not been segregated on the institution's books, segregation for settlement purposes shall be made from cost reports and schedules which reflect the high unit cost incurred during the early stages of the project.

(4) When the settlement proposal is on the inventory basis, initial costs should normally be allocated on the basis of total end items called for by the project immediately prior to termination; however, if the project includes end items of a diverse nature, some other equitable basis may be used, such as machine or labor hours.

(5) When initial costs are included in the settlement proposal as a direct charge, such costs shall not also be included in overhead.

(6) Initial costs attributable to only one project shall not be allocated to other projects.

(d) *Loss of useful value.* Loss of useful value of special tooling and special machinery and equipment is generally allowable if:

(1) Such special tooling, machinery, or equipment is not reasonably capable of use in the other work of the institution;

(2) The interest of the Government is protected by transfer of title or by other means deemed appropriate by the awarding agency; and

(3) The loss of useful value as to any one terminated project is limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the project bears to the entire terminated project and other Government projects for which the special tooling and special machinery and equipment were acquired.

(e) *Rental costs.* Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated project less the residual value of such leases, if:

(1) The amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the project and such further period as may be reasonable; and

(2) The institution makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease.

There also may be included the cost of alterations of such leased property, provided such alterations were necessary for the performance of the project, and of reasonable restoration required by the provisions of the lease.

(f) *Settlement expenses.* Settlement expenses including the following are generally allowable:

(1) Accounting, legal, clerical, and similar costs reasonably necessary for—

(a) The preparation and presentation to awarding agency of settlement claims and supporting data with respect to the terminated portion of the project, and

(b) The termination and settlement of subcontracts; and

(2) Reasonable costs for the storage, transportation, protection, and disposition of property acquired or produced for the project.

(g) Subcontractor claims. Subcontractor claims, including the allocable portion of claims which are common to the project and to other work of the institution are generally allowable.

43. *Trade, Business, Technical, and Professional Activity Costs*—(a) *Membership.* This category includes costs of memberships in trade, business, technical, and professional organizations. Such costs are allowable.

(b) Subscriptions. This item includes cost of subscriptions to trade, business, professional,

or technical periodicals. Such costs are allowable.

(c) Meetings and conferences. This item includes costs of meals, transportation, rental of facilities for meetings, and costs incidental thereto, when the primary purpose of the incurrence of such costs is the dissemination of technical information or stimulation of production. Such costs are allowable.

44. *Training and educational costs.* (a) The costs of training courses taken by a bona fide employee to acquire basic skills which he should bring to the job or to qualify a person for duties other than those related to an institution's goals are unallowable.

(b) Costs of on-the-job training and part-time education, at an undergraduate or post-graduate college level, related to the job requirements of bona fide employees, identified in (1) through (5) below, are allowable.

(1) Training materiels;

(2) Textbooks;

(3) Fees charged by the educational institution;

(4) Tuition charged by the educational institution, or in lieu of tuition, instructors' salaries and the related share of indirect cost of the educational institution to the extent that the sum thereof is not in excess of the tuition which would have been paid to the participating educational institution; and

(5) Straight-time compensation of each employee for time spent attending classes during working hours not in excess of 156 hours per year where circumstances do not permit the operation of classes or attendance at classes after regular working hours.

(c) Costs of tuition, fees, training materiels and textbooks (but not subsistence, salary, or any other emoluments) in connection with full time scientific and medical education at a post-graduate (but not undergraduate) college level related to the job requirements of bona fide employees for a total period not to exceed 1 school year for each employee so trained, are allowable when approved in writing by the awarding agency.

(d) Grants to educational or training institutions, including the donation of facilities or other properties, scholarships, or fellowships, are considered contributions and are unallowable.

45. *Transportation costs.* Transportation costs include freight, express, cartage, and postage charges relating either to goods purchased, in process, or delivered. These costs are allowable. When such costs can readily be identified with the items involved, they may be directly costed as transportation costs or added to the cost of such items (see G–22).

Where identification with the materiels received cannot readily be made, inbound transportation costs may be charged to the appropriate indirect cost accounts if the institution follows a consistent, equitable procedure in this respect. Outbound freight, if reimbursable under the terms of the grant or contract, shall be treated as a direct cost.

46. *Travel costs.* (a) Travel costs include costs of transportation, lodging, subsistence, and incidental expenses, incurred by institution personnel in a travel status while on official business.

(b) Travel costs may be based upon actual costs incurred, or on a per diem or mileage basis in lieu of actual costs, or on a combination of the two, provided the method used does not result in an unreasonable charge. The difference in cost between first-class and less than first-class air accommodations is unallowable except when less than first-class air accommodations are not reasonably available to meet necessary mission requirements, such as where less than first-class accommodations would (1) require circuitous routing, (2) require travel during unreasonable hours, (3) greatly increase the duration of the flight, (4) result in additional costs which would offset the transportation savings, or (5) offer accommodations which are not reasonably adequate for the medical needs of the traveler.

(c) Travel costs incurred in the normal course of overall administration of the business are allowable and shall be treated as indirect costs.

(d) Travel costs directly attributable to specific grant or contract performance are allowable and may be charged to the grant or contract in accordance with the principle of direct costing (see section C).

(e) Costs of personnel movement of a special or mass nature are allowable only when authorized or approved in writing by the sponsoring agency.

[FR Doc. 80–9526 Filed 4–2–80; 8:45 am]

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Thursday
April 3, 1980

Part III

Department of Health, Education, and Welfare

Office of Education

Education Appeal Board

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

45 CFR Part 100d

Education Appeal Board

AGENCY: Office of Education, HEW.

ACTION: Final regulations.

SUMMARY: These regulations establish rules for the conduct of proceedings before the Education Appeal Board (the Board). The Board conducts (1) audit appeal hearings, (2) withholding, termination, and cease and desist hearings initiated by the U.S. Commissioner of Education (the Commissioner), and (3) any other proceedings designated by the Commissioner as being within the jurisdiction of the Board.

EFFECTIVE DATES: These regulations are expected to take effect 45 days after they are transmitted to Congress. Regulations are usually transmitted to Congress several days before they are published in the **Federal Register**; the effective date is changed by statute if Congress disapproves the regulations or takes certain adjournments. For information concerning the effective date of these regulations, call or write the OE contact person named in this preamble.

When these regulations take effect they will supersede the interim final regulations published in the **Federal Register** on May 25, 1979, which established the Education Appeal Board and interim final rules for the conduct of proceedings before the Board (44 FR 30528). Future proceedings in all cases pending before the Education Appeal Board will be governed by these regulations.

FOR FURTHER INFORMATION CONTACT: Dr. David S. Pollen, Chairman, Education Appeal Board, U.S. Office of Education, 400 Maryland Ave. S.W., Room 4051 (FOB–6), Washington, D.C. 20202. Telephone (202) 245–7835.

SUPPLEMENTARY INFORMATION:

A. Background

In 1972 the Commissioner established the Title I Audit Hearing Board through the publication of a notice in the **Federal Register**. The function of this board was to give State agencies an impartial administrative forum in which to appeal adverse audit determinations resulting from Federal audits of programs administered under Title I of the Elementary and Secondary Education Act of 1965, as amended (Title I, ESEA).

In subsequent years it became apparent that grantees under OE State-administered programs other than Title I ESEA were in need of a similar forum to hear their appeals from adverse audit determinations. Recognizing this need, Congress, in the Education Amendments, of 1978, added Sections 451 through 456 to the General Education Provisions Act. These sections directed the Commissioner to establish an Education Appeal Board, the function of which is conduct audit appeal hearings involving (1) certain State-administered programs (see appendix A to Part 100d), (2) programs conducted under the Bilingual Education Act, and (3) programs conducted under the Emergency School Aid Act. Congress also gave the Board authority to conduct withholding and termination hearings, cease and desist hearings, and other proceedings designated by the Commissioner.

The Commissioner, with the approval of the Secretary of Health, Education, and Welfare, designated the existing Title I Audit Hearing Board as the new Education Appeal Board. Interim final regulations establishing the Title I Audit Hearing Board as the new Board were published in the **Federal Register** on May 25, 1979 (44 FR 30528) and became effective June 29, 1979. On that date, the Education Appeal Board assumed jurisdiction over the cases previously accepted for review by the Title I Audit Hearing Board. Those cases were listed in a notice of jurisdiction published in the **Federal Register** on July 26, 1979 (44 FR 43807).

B. Jurisdiction

Under Sections 451 through 456 of the General Education Provisions Act, the Education Appeal Board has authority to hear audit appeals for (1) State-administered programs listed in appendix A to the regulations, (2) programs conducted under the Bilingual Education Act, and (3) programs conducted under the Emergency School Aid Act. Since sections 451 through 456 of the statute became effective on March 1, 1979, the jurisdiction of the Board extends to appeals from final audit determinations issued by authorized OE officials on or after March 1, 1979.

The Board also has jurisdiction over appeals from final audit determination letters issued by athorized OE officials prior to March 1, 1979, in Title I ESEA programs. The Board, under limited circumstances may also assume jurisdiction over appeals from final audit determination letters issued by authorized officials prior to March 1, 1979, in State-administered programs other the Title I ESEA, for which no prior right of appeal existed. In deciding whether to review an appeal in a State-administered program other than Title I, ESEA, the Board will consider such factors as (1) the dollar amount involved in the audit appeal, (2) the precedential value of the case, and (3) the workload of the Board.

The Board also has jurisdiction over withholding, termination, and cease and desist actions initiated by authorized OE officials on or after March 1, 1979. The Board also hears appeals from State educational agencies that have received notice that the Commissioner intends to disapprove their applications for Title I, ESEA funds. These appeals will be heard by the Board under specific statutory authority found in section 182 of Title I, ESEA, and will be conducted as withholding hearings.

For the purpose of defining the Board's jurisdiction in the interim final regulations, Section 453 of the General Education Provisions Act authorizing the Board to conduct withholding hearings was interpreted as authorizing the Board to conduct termination hearings. This interpretation was based on former Section 434 of the General Education Provisions Act, which authorized termination proceedings and was superseded by the additions of sections 451 through 456 to the Act in 1978.

Two commenters on the interim final regulations questioned that interpretation. To remove any question, the Commissioner, through the publication of these regulations, specifically designates termination proceedings initiated by authorized OE officials as being within the jurisdiction of the Education Appeal Board. Termination hearings in OE discretionary grant programs are transferred from the jurisdiction of the Departmental Grant Appeals Board to the jurisdiction of the Education Appeal Board by these regulations, and will no longer be conducted by the Departmental Grant Appeals Board.

However, some determinations that affect OE programs remain within the jurisdiction of the Departmental Grant Appeals Board. For example, cost disallowances in OE discretionary grant programs—other than discretionary grant programs conducted under the Bilingual Education Act or the Emergency School Aid Act—are within the jurisdiction of the Departmental Grant Appeals Board. Disputes involving indirect cost rates or fringe benefits are also within the jurisdiction of the Departmental Grant Appeals Board rather than the Education Appeal Board (see 45 CFR 16.5(a)(5)).

In addition, other proceedings involving OE programs may fall outside the Board's jurisdiction. For example, bypass actions under Titles I and IV,

ESEA, and limitation-suspension-termination hearings involving student financial assistance programs under the Higher Education Act are not conducted by the Board, but are based on special OE procedures provided for by statute (see 20 U.S.C. 2740, 20 U.S.C. 3086, and 20 U.S.C. 1088f–1).

It is possible that with the creation of the new Department of Education in 1980, certain proceedings may be phased into the Board's jurisdiction under the Commissioner's statutory authority to designate additional programs as being within the Board's jurisdiction. For example, those proceedings discussed above involving OE programs currently within the jurisdiction of the Departmental Grant Appeals Board may be transferred to the Education Appeal Board when OE is transferred to the new Department. Other proceedings that may eventually be designated as Board proceedings include appeals from the disapprovals of State plans for programs other than Title I, ESEA; appeals from State educational agency actions brought by local educational agencies; and equalization proceedings for school assistance in federally affected areas. Notice of any action taken with regard to these proceedings will be published in the **Federal Register**. As of the date of publication of these regulations, the Board's jurisdiction is limited to the proceedings described in the regulations.

C. Comments

OE received a number of comments from the public on the interim final regulations for the Board. In response to those comments, some changes in the regulations have been made. A summary of the public comments and responses appears in appendix B to these regulations.

D. Citation of Legal Authority

As required by Section 431(a) of the General Education Provisions Act, as amended (20 U.S.C. 1232(a)), a citation of statutory authority for each substantive provision has been placed in parentheses immediately following the text of the provision. If all the provisions of a subpart are supported by the same citation, the citation is given at the end of the subpart.

(Catalog of Federal Domestic Assistance Number not applicable)

Dated: February 26, 1980.

William L. Smith,

U.S. Commissioner of Education.

45 CFR is amended by deleting the interim Education Appeal Board rules appearing at 44 FR 30528, which are superseded by the following:

PART 100D—EDUCATION APPEAL BOARD

Subpart A—General

Sec.
100d.1 Purpose.
100d.2 Jurisdiction.
100d.3 Definitions.
100d.4 Board membership.
100d.5 Panels.
100d.6 Eligibility for review.
100d.7 Exhaustion of remedies.
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Appendix A to Part 100d—Audit Appeal Jurisdiction.
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Authority: Section 1232 of the Education Amendments of 1978, Pub. L. 95–561; 92 Stat. 2347–2351 (20 U.S.C. 1234).

Subpart A—General

§ 100d.1 Purpose.

These regulations establish the Education Appeal Board in the Office of Education (OE) in accordance with Section 451 of the General Education Provisions Act, and set forth rules for the conduct of proceedings before the Board.

(20 U.S.C. 1234(a), (e))

§ 100d.2 Jurisdiction.

(a) The Board has jurisdiction to—

(1) Review final audit determinations concerning programs that are—

(i) State-administered programs listed in appendix A (see appendix A to Part 100d);

(ii) Conducted under the Bilingual Education Act; or

(iii) Conducted under the Emergency School Aid Act;

(2) Conduct withholding or termination hearings initiated by authorized OE officials in connection with applicable programs (see § 100d.3 *(Definitions)* for the definition of applicable program);

(3) Conduct cease and desist proceedings initiated by authorized OE officials in connection with applicable programs (see § 100d.3 *(Definitions)* for the definition of applicable program); and

(4) Conduct other proceedings as designated by the Commissioner of Education (the Commissioner) in the **Federal Register.**

(b) The Board also has jurisdiction under Section 182 of Title I of the Elementary and Secondary Education Act of 1965, as amended, to hear an appeal from each State educational agency (SEA) that has received written notice that the Commissioner intends to disapprove the SEA's application for Title I funds. An appeal under section 182 shall be conducted as a withholding hearing.

(20 U.S.C. 1234(a), 20 U.S.C. 2832(b))

§ 100d.3 Definitions.

"Appellant" means an SEA or other recipient that requests—

(a) A review of a final audit determination; or

(b) A withholding or termination hearing.

"Applicable program" means any program administered by an authorized OE official. This definition—

(a) Applies only in the context of withholding or termination hearings and cease and desist hearings;

(b) Includes programs that have been delegated to OE, such as the Emergency School Aid Act;

(c) Does not include the following student assistance programs authorized by Title IV and governed by Section 497A of the Higher Education Act of 1965:

(1) National Direct Student Loan Programs.

(2) College Work-Study Programs.

(3) Supplemental Educational Opportunity Grant Programs.

(4) Guaranteed Student Loan Programs.

(5) Basic Educational Opportunity Grant Programs.

"Authorized OE official" means—

(a) The Commissioner; or

(b) A person employed by OE who has been designated to act under the Commissioner's authority.

"Board" means the Education Appeal Board of OE.

"Board Chairperson" means the Board member designated by the Secretary of the Department of Health, Education, and Welfare to serve as administrative officer of the Board.

"Cease and desist" means to discontinue a prohibited practice or initiate a required practice.

"Final audit determination" means a written notice issued by an authorized OE official disallowing expenditures made by a recipient.

"Hearing" means any review proceeding conducted by the Board. A hearing may include a conference, a review of written submissions, an oral argument, or a full evidentiary hearing.

"Panel" means an Education Appeal Board Panel (see § 100d.5 (*Panels*)).

"Panel Chairperson" means the person designated by the Board Chairperson to serve as the presiding officer of a Panel.

"Party" means—

(a) The recipient requesting or appearing at a hearing under these regulations;

(b) The authorized OE official who issued the final audit determination being appealed, the notice of an intent to withhold or terminate funds, or the cease and desist complaint; and

(c) Any person, group, or agency that files an acceptable application to intervene (see § 100d.43 (*Intervention*)).

"Recipient" means the named party or entity that initially receives Federal funds under an OE grant or cooperative agreement. For example, for a State-administered program conducted under Title I of the Elementary and Secondary Education Act of 1965, as amended, the SEA is the recipient. This definition does not extend to procurement contracts.

"Suspension" means temporarily stopping payment of Federal funds to a recipient and stopping the recipient's authority to charge costs to a program, pending the outcome of a withholding or termination hearing.

"Termination" means ending the payment of Federal funds to a recipient and ending the recipient's authority to charge costs to a program before the recipient's authority to charge costs to a program expires.

"Withholding" means stopping payment of Federal funds to a recipient and stopping the recipient's authority to charge costs to a program, for the period of time the recipient is in violation of a requirement.

(20 U.S.C. 1234(e))

§ 100d.4 Board membership.

The Board consists of 15 to 30 members. Not more than one-third of the Board members may be employees of the Department of Health, Education, and Welfare.

(20 U.S.C. 1234(c))

§ 100d.5 Panels.

(a)(1) For each proceeding before the Board, the Board Chairperson selects a Panel, consisting of at least three members of the Board, and designates one of the Panel members as Panel Chairperson.

(2) The Board Chairperson may designate the entire Board to sit as a Panel for any case or class of cases.

(b) A majority of the members of a Panel must be members of the Board who are not full-time employees of the Federal Government.

(c) No Board member who is a party to, or has or has had any responsibility for the particular matter assigned to a Panel, may serve on that Panel.

(20 U.S.C. 1234(d))

§ 100d.6 Eligibility for review.

(a) Review under these regulations is open to a recipient that receives a written notice from an authorized OE official of—

(1) A final audit determination;

(2) An intent to withhold or terminate funds;

(3) A cease and desist complaint; or

(4) Any other proceeding designated by the Commissioner.

(b) Review under these regulations is also open to an SEA that has received written notice that the Commissioner intend to disapprove the SEA's application for funds under Title I of the Elementary and Secondary Education Act of 1965, as amended. The review shall be conducted as a withholding hearing.

(20 U.S.C. 1234(a), 20 U.S.C. 2832(b))

§ 100d.7 Exhaustion of remedies.

(a) If a recipient receives a written notice referred to in § 100d.6 (*Eligibility for review*) and brings a lawsuit to challenge that notice the recipient has failed to exhaust administrative remedies and the Commissioner may move for dismissal of the lawsuit on that basis.

(b) If the Panel assigned to hear an appeal finds that there are no issues in the appeal within the Board's jurisdiction, the Panel may, at the request of a party or Panel member, issue a decisioin or order to that effect (see subpart F (*Decisions and Orders*)).

(20 U.S.C. 1234, 1234d)

§§ 100d.8–100d.10 [Reserved]

Subpart B—Final Audit Determinations

Written Notice

§ 100d.11 Written notice of a final audit determination.

(a) An authorized OE official may issue written notice of a final audit determination to a recipient in connection with the following:

(1) State-administered programs listed in Appendix A (see appendix A to Part 100d).

(2) Programs administered under the Bilingual Education Act.

(3) Programs administered under the Emergency School Aid Act.

(b) In the written notice, the authorized OE official—

(1) Lists the disallowed expenditures made by the recipient;

(2) Indicates the reasons for the final audit determination in sufficient detail to allow the recipient to respond—for example, by referring to the relevant parts of a separate document, such as an audit report; and

(3) Advises the recipient that it must repay the disallowed expenditures to OE or, within 30 calendar days of its receipt of the written notice, request a review by the Board of the final audit determination.

(c) The authorized OE official sends the written notice to the recipient by certified mail with return receipt requested.

(20 U.S.C. 1234a(a))

§ 100d.12 Review of the written notice.

(a) The Board Chairperson reviews the written notice of the final audit determination after an application for review is received (see § 100d.13 *(Filing an application for review))* to insure that the written notice meets the requirements of § 100d.11(b) (*Written notice of a final audit determination*).

(b) If the Board Chairperson decides that the written notice does not meet the requirements of § 100d.11(b) (*Written notice of a final audit determination*), the Board Chairperson returns the determination to the official who issued it so that the determination may be properly modified.

(c) If the official makes the appropriate modification and the recipient wishes to pursue its appeal to the Board, the recipient shall amend its application for review within 30 calendar days of the date it receives the modification.

(20 U.S.C. 1234a(b))

Application for Review

§ 100d.13 Filing an application for review.

(a) An appellant seeking review of a final audit determination by the Board shall file a written application for review with the Board Chairperson.

(b) The appellant shall attach a copy of the written notice of a final audit determination to the application for review, and shall, to the satisfaction of the Board Chairperson—

(1) Identify the issues and facts in dispute; and

(2) State the appellant's position, together with the pertinent facts and reasons supporting that position.

(c) The appellant shall file the application for review within 30 calendar days after the date it receives the written notice of the final audit determination, unless the Board Chairperson grants an extension of time for a good reason.

(20 U.S.C. 1234.a(b))

§ 100d.14 Acceptance of the application for review.

(a) If the Board Chairperson decides that an application for review satisfies the requirements of § 100d.13 (*Filing an application for review*), the Board Chairperson issues a notice of the acceptance of the application to the appellant and the authorized OE official who issued the final audit determination.

(b) The Board Chairperson publishes a notice of acceptance of the application in the **Federal Register** prior to the scheduling of initial proceedings.

(c) If an acceptable application is filed, the Board Chairperson refers the appeal to a Panel, arranges for the scheduling of initial proceedings, and forwards to the Panel and parties an initial hearing record that includes—

(1) The final audit determination;

(2) The application for review; and

(3) Other relevant documents, such as audit reports.

(20 U.S.C. 1234a(b))

§ 100d.15 Rejection of the application for review.

(a) If the Board Chairperson determines that an application for review does not satisfy the requirements of § 100d.13 (*Filing an application for review*), the Board Chairperson returns the application to the appellant, together with the reasons for the rejection, by certified mail with return receipt requested.

(b) The appellant has 20 calendar days after the date it receives the notice of rejection to file an acceptable application.

(c) If an application for review is rejected two times, OE may take appropriate administrative action to collect the expenditures disallowed in the final audit determination.

(20 U.S.C. 1234a(b))

Burden of Proof

§ 100d.16 Burden of proof.

The appellant shall present its case first and has the burden of proving the allowability of the expenditures disallowed in the final audit determination.

(20 U.S.C. 1234a(b))

§§ 100d.17–100d.20 [Reserved]

Subpart C—Withholding and Termination

Written Notice

§ 100d.21 Written notice of an intent to withhold or terminate funds.

(a) An authorized OE official may issue a written notice of an intent to withhold or terminate funds to a recipient under an applicable program.

(b) In the written notice, the authorized OE official—

(1) States the facts that indicate the recipient failed to comply substantially with a requirement that applies to the funds;

(2) Cites the requirement that is the basis for the alleged failure to comply; and

(3) Advises the recipient that it may request a hearing before the Board.

(c) The authorized OE official sends the written notice to the recipient by certified mail with return receipt requested.

(20 U.S.C. 1234b (a), (b))

Application for a Withholding or Termination Hearing

§ 100d.22 Filing an application for a withholding or termination hearing.

(a) An appellant seeking a withholding or termination hearing before the Board shall file a written application with the Board Chairperson within 30 calendar days after the date it receives the written notice.

(b) In the application for a withholding or termination hearing, the appellant shall attach a copy of the written notice and shall, to the satisfaction of the Board Chairperson—

(1) Identify the issues and facts in dispute; and

(2) State the appellant's position, together with the pertinent facts and reasons supporting that position.

(20 U.S.C. 1234b(b))

§ 100d.23 Acceptance of the application.

(a) If the appellant files an application that meets the requirements of § 100d.22 (*Filing an application for a withholding or termination hearing*), the Board Chairperson issues a notice of the acceptance of the application to the appellant and the authorized OE official who issued the notice of the intent to withhold or terminate.

(b) The Board Chairperson publishes a notice of acceptance of the application in the **Federal Register** prior to the scheduling of initial proceedings.

(c) If the appellant files an acceptable application, the Board Chairperson

refers the appeal to a Panel, arranges for the scheduling of a hearing, and forwards to the Panel and the parties an initial hearing record that includes—

(1) The written notice;

(2) The application for a hearing; and

(3) Other relevant documents.

(20 U.S.C. 1234b(b))

§ 100d.24 Rejection of the application.

(a) If the Board Chairperson determines that an application for a withholding or termination hearing does not satisfy the requirements of § 100d.22 (*Filing an application for a withholding or termination hearing*), the Board Chairperson returns the application to the appellant, together with the reasons for the rejection, by certified mail with return receipt requested.

(b) The appellant has 20 calendar days after the date it receives the notice of rejection to file an acceptable application.

(c) If an application is rejected two times, OE takes appropriate administrative action to withhold or terminate funds.

(20 U.S.C. 1234b(b))

Suspension of Payments

§ 100d.25 Written notice of an intent to suspend funds.

(a) An authorized OE official may issue to the recipient a written notice of an intent to suspend funds during the course of the withholding or termination hearing.

(b) In the written notice, the authorized OE official—

(1) Indicates the reasons for the suspension; and

(2) Advises the recipient that the suspension becomes effective 10 calendar days after the date the recipient receives the written notice, unless within those 10 calendar days the recipient requests an opportunity to show cause why payments should not be suspended.

(c) The authorized OE official sends the written notice to the recipient by certified mail with return receipt requested.

(20 U.S.C. 1234b(c))

§ 100d.26 Request to show cause.

A recipient seeking an opportunity to show cause why payments should not be suspended shall submit a written request for a show cause hearing to the authorized OE official who issued the written notice.

(20 U.S.C. 1234b(c))

§ 100d.27 Show cause hearing.

(a) If a show cause hearing is requested, the authorized OE official—

(1) Notifies the recipient of the time and place for the hearing; and

(2) Designates a person to conduct the show cause hearing. The designee does not have to be a member of the Board but may not be a party to, or have or have had any responsibility for, the matter before the Board.

(b) At the show cause hearing, the designee considers such matters as—

(1) The necessity for the suspension of payments;

(2) Possible factual errors in the written notice of the intent to withhold or terminate;

(3) The nature of the violation charged in the written notice of the intent to withhold or terminate; and

(4) Hardship resulting from the suspension.

(20 U.S.C. 1234b(c))

§ 100d.28 Decision.

(a) The designee who conducts the show cause hearing—

(1) Decides whether there should be a suspension during the course of the withholding or termination hearing;

(2) Issues a written decision which includes a statement of findings;

(3) Submits the decision to the Board Chairperson; and

(4) Sends a copy of the decision to the recipient by certified mail with return receipt requested.

(b) The designee's decision is effective on receipt by the recipient and is not subject to review by the Commissioner.

(c) The Board Chairperson retains the designee's decision as part of the record of the withholding or termination hearing.

(20 U.S.C. 1234b(c))

§§ 100d.29–100d.30 [Reserved]

Subpart D—Cease and Desist

Written Notice

§ 100d.31 Written notice of a cease and desist complaint.

(a) An authorized OE official may issue a written notice of a cease and desist complaint to a recipient receiving funds under an applicable program. The cease and desist proceeding may be used as an alternative to a withholding or termination hearing.

(b) In the written notice, the authorized OE official—

(1) States the facts that indicate the recipient failed to comply substantially with a requirement that applies to the funds;

(2) Cites the requirement that is the basis for the alleged failure to comply; and

(3) Gives notice of a hearing that is to be held at least 30 calendar days after the date the recipient receives the written notice.

(c) The authorized OE official sends the written notice to the recipient by certified mail with return receipt requested.

(20 U.S.C. 1234c(a))

Hearing

§ 100d.32 Right to appear at the cease and desist hearing.

The recipient has the right to appear at the cease and desist hearing, which is held before a Panel of the Board on the date specified in the complaint.

(20 U.S.C. 1234c(b))

§ 100d.33 Opportunity to show cause.

At the hearing the recipient shall have the opportunity to present reasons why a cease and desist order should not be issued by the Board based on the violation of law stated in the complaint.

(20 U.S.C. 1234c(b))

Order

§ 100d.34 Written report and order.

If, after the hearing, the Panel decides that the recipient has violated a legal requirement as stated in the complaint, the Panel—

(a) Makes a written report stating its findings of fact; and

(b) Issues a cease and desist order.

(See § 100d.85 (*The cease and desist report and order*).)

(20 U.S.C. 1234c(c))

§§ 100d.35–100d.40 [Reserved]

Subpart E—Practice and Procedure

General Rules

§ 100d.41 Applicability of this subpart.

This subpart applies only to proceedings before the Board.

(20 U.S.C. 1234(e))

§ 100d.42 Applicability of other laws.

(a) Sections 554, 556, and 557 of the Administrative Procedure Act (5 U.S.C.) apply to proceedings before the Board with respect to—

(1) The receipt of oral or written testimony;

(2) Notice of the issues to be considered;

(3) The right to counsel;

(4) Intervention of third parties; and

(5) Transcripts of proceedings.

(b) Other provisions of the Administrative Procedure Act and the Federal Rules of Civil Procedure do not apply to proceedings before the Board.

(20 U.S.C. 1234(e))

§ 100d.43 Intervention.

(a) A person, group, or agency with an interest in and having relevant information about a case before the Board may file with the Board Chairperson as application to intervene.

(b) The application to intervene shall contain—

(1) A statement of the applicant's interest; and

(2) A summary of the relevant information.

(c)(1) If the application is filed before a case is assigned to a Panel, the Board Chairperson decides whether approval of the application to intervene will aid the Panel in its disposition of the case.

(2) If the application is filed after the Board Chairperson has assigned the case to a Panel, the Panel decides whether approval of the application to intervene will aid the Panel in its disposition of the case.

(d) The Board Chairperson notifies the applicant seeking to intervene and the other parties of the approval or disapproval of the application to intervene.

(e) If an application to intervene is approved, the intervenor becomes a party to the proceedings.

(f) If an application to intervene is disapproved, the applicant may submit to the Board Chairperson an amended application to intervene.

(20 U.S.C. 1234(e))

§ 100d.44 Representation by counsel.

Parties may be represented by counsel.

(20 U.S.C. 1234(e))

§ 100d.45 Filing of documents.

(a) An applicant shall file with the Board Chairperson one copy of an application for review or to intervene.

(b) Once a Panel has been assigned, parties shall—

(1) File with the Board Chairperson five copies of all written motions, briefs—including cited materials that are not readily available—and other documents; and

(2) Provide a copy to each of the other parties to the proceedings.

(c) Parties have 25 calendar days from the date of receipt of any motion to file a response with the Board Chairperson, unless the Panel Chairperson grants an extension for a good reason.

(d) The date of filing is the date the document is postmarked or hand-delivered to the Office of the Board Chairperson. If a scheduled filing date occurs on a Saturday, Sunday, or Federal holiday, the next business day is the date of filing.

(20 U.S.C. 1234(e))

§ 100d.46 Availability of decisions.

The Board Chairperson maintains the files of the Board. The decision of the Board are available to the public on request and with payment of reproduction costs.

(20 U.S.C. 1234(e))

§ 100d.47 Communications.

No party shall communicate with the Panel or Board Chairperson on matters under review, except minor procedural matters, unless all parties to the case are given—

(a) Timely and adequate notice of the communication; and

(b) Reasonable opportunity to respond.

(20 U.S.C. 1234(e))

§ 100d.48 Transcripts.

(a) The Board Chairperson—

(1) Arranges for the preparation of a transcript of each hearing;

(2) Retains the original transcript as part of the record of the hearing; and

(3) Provides one copy of the transcript to each party and Panel member.

(b) Additional copies of the transcript are available on request and with payment of the reporting service's reproduction fee.

(20 U.S.C. 1234(e))

§ 100d.49 Subpoenas.

(a) The Panel does not have authority to issue subpoenas.

(b) The Panel may ask a party to provide for oral or written examination one or more available witnesses who have knowledge about the matter under review.

(20 U.S.C. 1234(e))

§ 100d.50 Exchange of information.

There is no discovery as conducted under the Federal Rules of Civil Procedure, but the parties are encouraged to exchange relevant documents and information.

(20 U.S.C. 1234(e))

§ 100d.51 Evidence.

The Panel accepts any evidence that it finds is relevant and material to the proceedings. Parties may object to evidence they consider to be irrelevant, immaterial, or unduly repetitious.

(20 U.S.C. 1234(e))

§ 100d.52 Panel decisions.

Decisions of the Panel are made by a majority of the Panel members.

(20 U.S.C. 1234(e))

§ 100d.53 Intermediate review.

The parties may not file comments with the Commissioner regarding matters under review or any rulings of a Panel until the Panel has reached its decision. (See § 100d.81 (*The Panel's decision*).)

(20 U.S.C. 1234(e))

§§ 100d.54–100d.60 [Reserved]

Panel Proceedings

§ 100d.61 Authority and responsibilities of Panels.

(a) The Panel may regulate the course of proceedings and the conduct of the parties during the proceedings. The Panel takes all steps necessary to conduct a fair and impartial proceeding, to avoid delay, and to maintain order, including the following:

(1) The Panel may hold conferences or other types of appropriate proceedings to clarify, simplify, or define the issues or to consider other matters that may aid in the disposition of an appeal.

(2) The Panel may require parties to state their positions and to provide all or part of the evidence in writing.

(3) the Panel may require parties to present testimony through affidavits and to conduct cross-examination through interrogatories.

(4) The Panel may direct the parties to exchange relevant documents or information and lists of witnesses, and to send copies to the Panel.

(5) The Panel may receive, rule on, exclude, or limit evidence at any stage of the proceedings.

(6) The Panel may rule on motions and other issues at any stage of the proceedings.

(7) Although hearings are open to the general public, the Panel may establish reasonable rules for public attendance and media coverage of the proceedings.

(8) The Panel may examine witnesses.

(9) The Panel may set reasonable time limits for submission of written documents.

(10) The Panel may end an appeal and issue a decision against a party if that party does not meet the time limits set by the Panel or otherwise delays the appeal.

(b) The Panel may interpret applicable statutes and regulations but may not waive them or rule on their validity.

(20 U.S.C. 1234(e))

§ 100d.62 Conferences.

(a) The Board Chairperson may schedule a prehearing conference of the Panel members and parties.

(b) A Panel member or party may request a conference of the Panel members and parties except in the case of a show cause proceeding. The Panel Chairperson decides whether a conference is necessary.

(c) At a prehearing or other conference the Panel and the parties may consider such subjects as—

(1) Narrowing and clarifying issues;

(2) Assisting the parties in reaching agreements and stipulations;

(3) Clarifying the positions of the parties;

(4) Presenting the direct case of the parties in writing, in whole or in part, or conducting an oral argument or evidentiary hearing;

(5) Setting the dates for the exchange of written documents, the receipt of comments from the parties on the need for an oral argument or evidentiary hearing, and further proceedings before the Panel; and

(6) Requesting the names of witnsses each party wishes to present at an evidentiary hearing and estimates of time for each presentation.

(d) At a prehearing or other conference the parties shall be prepared to respond to the subjects listed in paragraph (c).

(e) Following a prehearing or other conference the Panel may issue a written statement describing the issues raised, the action taken, and the stipulations and agreements reached by the parties.

(20 U.S.C. 1234(e))

§§ 100d.63–100d.70 [Reserved]

Presentation of Case

§ 100d.71 Written submissions normally required.

The parties shall present their positions through briefs and the submission of other documents but may request an oral argument or evidentiary hearing. The Panel shall determine whether an oral argument or evidentiary hearing is needed to clarify the positions of the parties.

(20 U.S.C. 1234(e))

§ 100d.72 Notice of an oral argument or evidentiary hearing.

If the Panel decides that an oral argument or evidentiary hearing is necessary, the Panel Chairperson sends written notice of this decision to all parties. The notice states the time and place of the proceeding and the issues to be considered. The notice may be published in the **Federal Register** upon the request of a party or Panel member.

(20 U.S.C. 1234(e))

§ 100d.73 Conduct of a hearing.

A hearing is generally conducted by all the Panel members, but, if circumstances require, a hearing may be conducted by one or more Panel members. All the Panel members shall participate in the Panel's decision.

(20 U.S.C. 1234(e))

§§ 100d.74–100d.80 [Reserved]

Subpart F—Decisions and Orders

Final Audit Determinations, Withholdings, and Terminations

§ 100d.81 The Panel's decision.

The Panel issues a decision in the appeal from the final audit determination or the intent to withhold or terminate funds. The Board Chairperson submits the Panel's decision to the Commissioner and sends a copy to each party by certified mail with return receipt requested.

(20 U.S.C. 1234a(d), 20 U.S.C. 1234b(d))

§ 100d.82 Opportunity to comment on the Panel's decision.

(a) *Initial comments and recommendations.* Each party has the opportunity to file comments and recommendations on the Panel's decision with the Board Chairperson within 15 calendar days of the date the party receives the Panel's decision.

(b) *Responsive comments and recommendations.* The Board Chairperson sends a copy of a party's initial comments and recommendations to each of the other parties by certified mail with return receipt requested. Each party may file responsive comments and recommendations with the Board Chairperson within 7 calendar days of the date the party receives the initial comments and recommendations.

(c) The Board Chairperson forwards the parties' initial and responsive comments on the Panel's decision to the Commissioner.

(20 U.S.C. 1234a(d), 20 U.S.C. 1234b(d)

§ 100d.83 The Commissioner's decision.

(a) The Panel's decision becomes the final decision of the Commissioner 60 calendar days after the date the recipient receives the Panel's decision, unless the Commissioner, for good cause shown, modifies or sets aside the Panel's decision. If the recipient wishes to file a petition for judicial review of the Panel's decision, the recipient shall file the petition within those 60 days. (See Section 455 of the General Education Provisions Act (20 U.S.C. 1234d) for a discussion of judicial review.)

(b) If the Commissioner modifies or sets aside the Panel's decision within the 60 days, the Commissioner issues a decision that—

(1) Includes a statement of the reasons for this action; and

(2) Becomes the Commissioner's final decision 60 calendar days after it is issued.

(c) The Board Chairperson sends a copy of the Commissioner's final decision and statement of reasons, or a notice that the Panel's decision has become the Commissioner's final decision, to the Panel and to each of the parties. If the recipient wishes to file a petition for judicial review of the Commissioner's final decision, the recipient shall file the petition within 60 calendar days of the date of the Commissioner's final decision (see 20 U.S.C. 1234d).

(d) The final decision of the Commissioner is the final decision of the Department.

(20 U.S.C. 1234a(d), 1234b(d), 1234d)

§ 100d.84 Collection.

If the final decision of the Commissioner sustains the final audit determination or the intent to withhold or terminate funds, OE takes immediate steps to collect the debt or withhold or terminate funds.

(20 U.S.C. 1234a(e), 20 U.S.C. 1234b)

Cease and Desist

§ 100d.85 The cease and desist report and order.

(a) If the Panel issues a cease and desist report and order (described in §100d. 34 *(Written report and order)*), the Board Chairperson sends the report and order to the recipient by certified mail with return receipt requested.

(b) The order becomes final 60 calendar days after the date the order is received by the recipient. The recipient may file a petition for judicial review within those 60 days. (See Section 455 of the General Education Provisions Act (20 U.S.C. 1234d) for a discussion of judicial review.) The order is not subject to review by the Commissioner.

(20 U.S.C. 1234c(d), 1234d)

§ 100d.86 Enforcement.

(a) If the Panel issues a cease and desist report and order, the recipient shall take immediate steps to comply with the order.

(b) If, after a reasonable period of time, the Commissioner determines that the recipient has not complied with the cease and desist order, the Commissioner may—

(1) Withhold funds payable to the recipient under the affected program, including funds payable for administrative costs, without any further proceedings before the Board; or

(2) Certify the facts of the matter to the Attorney General for enforcement through appropriate proceedings.

(20 U.S.C. 1234c(e))

§§ 100d.87–100d.90 [Reserved]

Appendix A to Part 100d—Audit Appeal Jurisdiction

State-Administered Programs within the Audit Appeal Jurisdiction of the Education Appeal Board:

(a) Programs referred to in Section 452 of the General Education Provisions Act (20 U.S.C. 1234a):

(1) Financial assistance to State and local educational agencies under Title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2701).

(2) Financial assistance for school library resources, textbooks, and other instructional materials under Title II of the Elementary and Secondary Education Act of 1965 (as in effect, September 30, 1978) (20 U.S.C. 821).

(3) State basic skills improvement programs under Title II–B of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2901).

(4) Supplementary educational centers and services; guidance, counseling, and testing under Title III of the Elementary and Secondary Education Act of 1965 (as in effect, September 30, 1978) (20 U.S.C. 841).

(5) Instructional materials and school library resources; improvement in local educational practices; and guidance, counseling, and testing under Title IV of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 1801).

(6) Community schools programs under Title VIII of the Elementary and Secondary Education Act of 1965 (except sections 809–813) (20 U.S.C. 3281).

(7) Gifted and talented children's education programs under Title IX of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 3311).

(8) Assistance to States for education of handicapped children under Part B of the Education of the Handicapped Act (20 U.S.C. 1411).

(9) State adult education programs under the Adult Education Act (except sections 309, 316, and 318) (20 U.S.C. 1201).

(10) Financial assistance for strengthening instruction in science, mathematics, modern foreign languages, and other critical subjects under Title III–A of the National Defense Education Act of 1958 (except section 305) (20 U.S.C. 441).

(11) Programs under the Career Education Incentive Act (except sections 10, 11, and 12) (20 U.S.C. 2601).

(12) Programs under Title II of the Indochina Refugee Children's Assistance Act (20 U.S.C. 1211b).

(13) Programs under Title VI, Part A of the Higher Education Act (20 U.S.C. 1121).

(14) Educational information centers programs under Sections 418 A and B of the Higher Education Act (20 U.S.C. 1070d-2).

(b) Programs designated by the Commissioner as being within the audit appeal jurisdiction of the Education Appeal Board:

(1) Vocational education programs under the Vocational Education Act of 1963: part A of title I (State vocational education programs) (20 U.S.C. 2301).

(2) Community service and continuing education programs under Part A of Title I of the Higher Education Act of 1965 (except sections 106, 110, and 111) (20 U.S.C. 1001).

(3) Programs under the Library Services and Construction Act (20 U.S.C. 351).

Note.—This Appendix B for Part 100d will not be published in Title 45 of the Code of Federal Regulations.

Appendix B to Part 100d—Response to Public Comments

The Commissioner has responded to all the public comments OE recieved concerning the interim final regulations for the Education Appeal Board with the exceptions of general comments that did not suggest how the regulations could be changed, statements that could not be understood, or statements that concerned issues beyond the scope of regulations establishing procedures for the Board. A summary of those comments and the Commissioner's responses follows.

General

Comment. Two commenters raised questions concerning the jurisdiction of the Educational Appeal Board. One commenter suggested that the regulations clarify the fact that the Board has no jurisdiction over bypass actions under Titles I and IV, ESEA, and one commenter asked who would hear appeals if applications for funds are denied.

Response. No change has been made. At present, the Board does not have jurisdiction to conduct bypass actions. It has specific statutory authority to hear appeals from State educational agencies if applications for funds under Title I of the Elementary and Secondary Education Act of 1965, as amended, are disapproved by the Commissioner, but that authority does not exend to appeals from denials of other applications for funds.

Both these points are made in the preamble to the final regulations. However, the Commissioner does not believe that it would be useful to attempt to list all proceedings that fall outside the Board's jurisdiction or appropriate to single out a few of those proceedings for special mention in the final regulations.

Comment. One commenter suggested that cease and desist orders be used to effect complaince with Title IX, and that the regulations make explicit the possibility that violations of program prohibitions against sex discrimination might trigger withholding, termination, or cease and desist proceedings.

Response. No change has been made. Since regulations have been promulgated that give the Department's Office for Civil Rights authority to enforce Title IX, the Commissioner sees a number of legal and practical difficulties in using cease and desist proceedings before the Education Appeal Board to enforce Title IX against recipients of Federal education funds. The Commissioner has determined that in view of possible legal problems resulting from the use of cease and desist orders to enforce Title IX, and the already substantial caseload of the Board, Board proceedings should not be used as an alternative means of enforcing Title IX.

Violations of program prohibitions against sex discrimination contained in various program regulations may give rise to OE enforcement action before the Board. However, the purpose of the Board regulations is to establish the Board and rules for the conduct of proceedings before the Board. The Commissioner does not consider it appropriate, through the publication of these regulations, to single out any particular program or program prohibitions for special emphasis, to suggest that some program prohibitions are more or less important than others, or to involve the neutral and impartial Board in statements of OE policy.

Comment. One commenter suggested that the regulations spell out the form of determinations that may trigger OE initiation of Board proceedings. Another commenter suggested that the regulations set out an internal review process for OE initiation of Board proceedings.

Response. No change has been made. Any attempt to define OE internal decision-making processes through the Board regulations would go beyond the stated purpose of the regulations and exceed the Board's authority. In the Commissioner's judgment, it would be improper to link the Board to any degree with internal OE decisions to initiate enforcement proceedings.

Comment. One commenter suggested that the regulations state when an audit is complete; set standards for the quality of a final audit determination; and limit

audit appeals to the issues presented in the final audit determination.

Response. No change has been made. The Board has no authority to set standards for audits of OE programs. However §§ 100d.11 and 100d.12 of the regulations set notice standards for final audit determinations and provide for review of final audit determinations that have been appealed to ensure that the determinations meet the notice standards. Section 100d.51 and 100d.61(a)(4) allow Panels to rule on questions of relevancy. The Commissioner believes that these provisions are sufficient.

Comment. One commenter suggested that the regulations express the Secretary's intent to ensure adequate representation of women and minorities on the Board.

Response. No change has been made. The Secretary, the Assistant Secetary for Education, and the Commissioner remain committed to ensuring that women and members of minority groups are adequately represented on the Board. Special efforts have been and are being made to recruit women and minorities to fill Board vacancies.

Comment. One commenter objected to the designation of the Title I Audit Hearing Board as the Education Appeal Board.

Response. No change has been made. The Commissioner's designation, and the Secretary's approval, of the Title I Audit Hearing Board as the Education Appeal Board was authorized by Section 451(f) of the General Education Provisions Act. The only requirement was that the existing appeal board be capable of carrying out the functions of the Education Appeal Board. The Commissioner and the Secretary determined that the Title I Audit Hearing Board met this requirement.

Comment. Two commenters questioned the policy of not including in the regulations all the provisions contained in Sections 451 through 456 of the General Education Provisions Act in the regulations.

Response. The Commissioner believes that all the sections that pertain directly to Board proceedings, and that recipients need to know to participate in Board proceedings, are included in the regulations. The sections outlining the Commissioner's authority to compromise claims or return recovered funds and the section providing for judicial review are not appropriate subjects for inclusion in procedural regulations for the Board.

Comment. Several commenters objected to OE's decision to proceed with interim final regulations rather than a notice of proposed rulemaking.

Response. No change has been made. In view of the procedural nature of the rules, the Commissioner does not believe that OE was required to publish a notice of proposed rulemaking. In addition, the Commissioner believes that it was in the public interest to establish the Board as an effective appeal mechanism at the earliest possible date so that recipients would be able to exercise their newly-granted rights of appeal.

The members of the public were given an opportunity to comment on the interim final regulations. Those comments were considered carefully in the drafting of the final regulations.

Section 100d.3 Defintions.

Comment. Two commenters objected to the definition of "authorized OE official" as being too broad and suggested that including the Commissioner as an authorized OE official might lead to a conflict of interest since the Commissioner reviews all decisions. The commenters also suggested that granting authority to "authorized OE officials" conflicts with the recently-published Notice of Proposed Rulemaking for the Education Division General Administrative Regulations (44 FR 26298, May 4, 1979), specifically § 100b.900 which reads:

> No act or failure to act by an official agent, or employee of HEW can affect the responsibility of the Commissioner to enforce a regulation.

Response. No change has been made. The Commissioner does not agree that the definition of "authorized OE official" is too broad, because it is necessary as an administrative matter to allow OE employees to be designated to act for the Commissioner. However, the statute clearly gives the Commissioner the authority to issue final audit determinations and notice of withholding, termination, and cease and desist proceedings, and does not require the Commissioner to delegate that authority. For that reason, the definition of "authorized OE official" includes both the Commissioner and OE employees designated to act under the Commissioner's authority.

Further, the Commissioner does not see a conflict between allowing authorized OE officials to act for the Commissioner and § 100b.900 of the Education Division General Administrative Regulations. Section 100b.900 does not suggest that the Commissioner may not designate OE employees to act under the Commissioner's authority.

Comment. Two commenters objected to the inclusion of the phrase "or initiate a required practice" in the definition of "cease and desist" on the ground that a cease and desist order cannot mandate a required act.

Response. No change has been made. Section 454 of the General Education Provisions Act allows the Board to issue a cease and desist order requiring a recipient that has violated the law to cease and desist from the practice, policy, or procedure that resulted in the violation. The Commissioner believes that, in some instances, compliance with the cease and desist order will require the recipient to perform an affirmative act.

For example, if the recipient violated a statutory or regulatory requirement by failing to keep adequate records, the recipient would have to implement an adequate recordkeeping system to comply with both the order and the law. The Commissioner believes that the definition of "cease and desist" contained in § 100d.3 simply reflects that possibility.

Comment. One commenter said that the definition of "hearing" should be more limited.

Response. No change has been made. Adequate review in a case before the Board could range from a Panel's review of written submissions to an extended series of conferences, oral arguments, or evidentiary hearings. The definition of the word "hearing" was intended to be broad so that Panels might have maximum flexibility in adequately reviewing cases.

Comment. Several commenters suggested that the definition of "recipient" explicitly include a local educational agency.

Response. A change has been made. The word "initially" has been added to the definition of "recipient" so that "recipient" is defined as "the named party or entity that initially receives Federal funds under an OE grant or cooperative agreement."

Under some direct grant programs, a local educational agency will be the named party or entity that initially receives funds, and will have the right to appeal adverse audit determinations or withholding, termination, or cease and desist actions.

Under most State-administered programs, however, the State educational agency initially receives the funds, bears the responsibility for ensuring that Federal education funds are spent properly, and should recieve the final audit determination or written notice of withholding, termination, or cease and desist proceedings. An example now noted in the definition is a program conducted under Title I of the Elementary and Secondary Education

Act of 1965, as amended, where the State educational agency is the recipient and will have the right of appeal.

The addition of the word "initially" to the definition of recipient, and the inclusion of the example, should clarify this point.

Section 100d.4 Board membership.

Comment. One commenter suggested that employees of the HEW Audit Agency be prohibited from serving on the Board.

Response. No change has been made. Section 451 of the statute provides that the Secretary shall designate the members of the Board in consultation with the Assistant Secretary for Education and the Commissioner. The only restriction imposed by the statute is that no more than one-third of the Board members may be HEW employees.

Section 100d.5 Panels.

Comment. One commenter suggested that HEW employees representing the programs involved in the cases before the Board be appointed to the Board.

Response. No change has been made. The Commissioner believes that the Board should be as impartial as possible and that program representatives would have, or at least appear to have, an interest or bias in the matter.

Comment. One commenter pointed out that the statute requires only that a majority of the members of a Panel not be individuals in the full-time employment of the Federal government. The interim final regulations were more restrictive.

Response. A change has been made. The regulations have been amended to reflect the statute.

Comment. One commenter noted that the statute excludes an individual who has responsibility for a matter before the Board from serving on the Panel that hears the matter, while the regulations broaden the provision to exclude any person who has or has had responsibility.

Response. The regulations are more restrictive in an effort to minimize further the possibility that a Board member will have a conflict of interest or bias with regard to the matter at hand.

Section 100d.7 Exhaustion of remedies.

Comment. Several commenters stated that exhaustion of remedies should not be required if the Panel fails or refuses to rule on questions of its own jurisdiction or on the validity of OE rules and regulations.

Response. A change has been made. The Commissioner agrees that if the only issues in a case before the Board fall outside the Board's jurisdiction, the recipient should not be required to argue those issues before the Board. The change in the regulations allows the Panel assigned to hear an appeal to decide that there are no issues in the case within the Board's jurisdiction and to issue a decision or order to that effect. That decision or order would be subject to review by the Commissioner but, once final, should allow the recipient to proceed to court.

Comment. One commenter objected to imposing a timeliness requirement on the recipient but not OE.

Response. A change has been made. The use of the word "timely" in § 100d.7 was not intended to suggest that only the recipient was required to proceed in a timely manner, and the word has been deleted to remove that suggestion. Of course, the recipient must still bring a proper administrative appeal, and a proper administrative appeal would necessarily be timely.

Comment. One commenter objected to the failure to cite a statutory authority for the section, and suggested that the section was contrary to the legislative intent expressed in Section 455 of the General Education Provisions Act providing for judicial review.

Response. A change has been made. Statutory citations have been supplied. The Commissioner believes that by establishing the Board as an administrative forum and providing for judicial review of Board actions, Congress intended recipients to take their cases to the Board before going into court.

Section 100d.11 Written notice of a final audit determination.

Comment. One commenter suggested that OE be required to list the source documents used in making the audit determination.

Response. No change has been made. The written notice of a final audit determination is designed simply to advise the recipient that OE has determined that Federal education funds were misspent, not to lay out OE's case in detail. A listing of source documents may be requested at a later date under § 100d.50 providing for an exchange of relevant information between the parties.

Section 100d.12 Review of the written notice.

Comment. Two commenters suggested that the Board Chairperson review the final audit determination before it is sent to the audited agency.

Response. No change has been made. A final audit determination does not come within the Board's jurisdiction until it has been appealed. Further, the Commissioner does not believe that it would be appropriate to involve the Board in the audit determination process. That involvement would jeopardize the Board's neutrality.

Section 100d.13 Filing an application for review.

Section 100d.14 Acceptance of an application for review.

Section 100d.15 Rejection of an application for review.

Comment. One commenter asked why the Board's authority to review and accept or reject an application for review was delegated under the regulations to the Board Chairperson.

Response. The Board Chairperson was delegated responsibility for reviewing applications for review because it would be administratively difficult, time-consuming, and unduly expensive to convene the entire Board, or even several members of the Board, to review each application for review.

By allowing the Board Chairperson to initially review each application to see if it meets minimal information requirements, the regulations help to streamline the appeal process and allow the time and attention of the other Board members to be saved for, and directed to, the merits of the cases.

Section 100d.13 Filing an application for review.

Comment. One commenter noted that under the statute, the Board is to specify the form and information required in an application for review, but that under the regulations it appeared that the Commissioner is prescribing the format and information required in the application.

Response. No change has been made. The regulations set out certain minimal requirements for review so that appellants will not have to contact the Board or turn to other sources for information before submitting their applications for review. Since appellants have only 30 days in which to seek review, it is to their advantage to have easy reference to the application requirements. Current members of the Board were involved in the drafting of the regulations.

Comment. One commenter noted that the statute—unlike the regulations—did not allow an extension of time for filing an application for review.

Response. No change has been made. Although the legislation does not provide for an extension of the 30-day time period for filing an application for review, the Title I Audit Hearing Board—the predecessor to the

Education Appeal Board—found that some cases involved such complicated issues or so many different localities that 30 days did not allow an appellant sufficient time in which to prepare an adequate application for review.

The Title I Board Chairperson, having received a fair number of requests from appellants for extensions of the 30-day time period, attempted to accommodate the appellants if the requests appeared reasonable. The Commissioner believes that the Education Appeal Board should have the same flexibility.

Comment. Several commenters suggested that the 30 calendar days allowed for filing an application for review should be extended to 60 calendar days.

Response. No change has been made. The 30 day time limit was set by the statute.

Section 100d.14 Acceptance of the application for review.

Comment. One commenter said that the regulations should speak to the quality of audit reports included in initial hearing records.

Response. No change has been made. Since the Board has no authority to oversee audits conducted by employees of the Department, it would not be appropriate to include standards for audit reports in the Board regulations.

Section 100d.15 Rejection of the application for review.

Comment. Several commenters thought that an appellant should have 60 calendar days, rather than 20, to file a second, acceptable application for review. Another commenter thought that an appellant should be allowed to request technical assistance from OE in preparing the second application for review.

Response. The Commissioner believes that since the appellant has already had 30 days to prepare the initial application for review, 20 additional days allows the appellant a reasonable amount of time in which to prepare an amended application for review. The Commissioner also believes that technical assistance from OE is neither necessary, since the requirements for an application for review are so minimal, nor appropriate, since the appellant is appealing an OE determination.

Section 100d.16 Burden of proof.

Comment. One commenter asked why the regulations specified that the appellant in an audit appeal is required to present its case first, and why the statutory wording placing the burden of proof on the appellant was rephrased in the regulations.

Response. No change has been made. The regulations specify that the appellant shall present its case first to settle a procedural issue that frequently arose in cases before the Title I Audit Hearing Board. The Title I Board found that since the appellant had the burden of proof, and generally had access to the necessary materials—e.g., payroll records—it made sense to have the appellant present its case first.

Although the wording of the regulations is slightly different than the wording of the statute with regard to the burden of proof in an audit appeal, the change in wording is not intended to change the meaning of the law. The change was made because the phrase "burden of proof" is commonly used while "burden of demonstration" does not have the same generally accepted meaning.

Comment. One commenter said that the auditing agency should have the burden of proving that expenditures should be disallowed.

Response. No change has been made. Section 452(b) of the statute places the burden of proof in an audit appeal on the appellant.

Subpart C—Withholding and Termination.

Comment. Two commenters objected to the interpretation of withholding to include termination.

Response. A change has been made, as noted in section B of the supplementary information contained in the preamble to the regulations. To remove any objection, the Commissioner designates, under section 451(a)(4) of the statute and through the publication of these regulations, termination proceedings initiated by authorized OE officials as being within the jurisdiction of the Education Appeal Board.

Section 100d.25 Written notice of an intent to suspend funds.

Comment. Several commenters said that a recipient of a written notice of an intent to suspend funds should have 30 days, rather than 10, to request an opportunity to show cause why payments should not be suspended.

Response. No change has been made. The Commissioner believes that if funds are to be suspended to prevent the misspending of the funds, the funds should be suspended as quickly as possible. Further, since the recipient is only required to request an opportunity to show cause why payments should not be suspended within the 10 days, and the suspension is only a temporary hold on funds pending the outcome of the withholding or termination proceeding, the Commissioner believes that the 10 day period is adequate to protect the recipient's interests.

Section 100d.26 Request to show cause.

Section 100d.27 Show cause hearing.

Section 100d.28 Decision.

Comment. One commenter was concerned about who is to be the authorized OE official responsible for overseeing the show cause proceeding, and whether it would present a conflict of interest to have the official who first issued the notice designate the person to conduct the show cause hearing.

Response. A change has been made. The suspension procedures were designed so that any improper expenditure of Federal education funds may be halted as soon as possible. The regulations therefore allow an authorized OE official to designate a person who is not necessarily a Board member, but who is immediately available, to conduct the show cause proceeding.

The regulations have been amended to impose the same conflict of interest standard on a designee as the statute imposes on a Board member; i.e., a person may not be designated to conduct a suspension proceeding who is a party to, or has or has had any responsibility for, the matter before the Board.

Comment. Two commenters did not think that it was clear how a suspension proceeding meshed with a withholding or termination hearing, and suggested that the disposition become part of the record of the case.

Response. A change has been made. The regulations now provide that an order to suspend funds will become part of the record in a withholding or termination proceeding.

Comment. One commenter asked why the decision was not subject to review by the Commissioner.

Response. No change has been made. The designee's decision was not made subject to review by the Commissioner because review would require a substantial amount of time and unduly delay the effective date of the suspension. Since a suspension is only temporary pending the outcome of a withholding or termination hearing, the lack of review should not irreparably harm the appellant.

Section 100d.42 Applicability of other laws.

Comment. Several commenters argued that the entire Administrative Procedure Act and the Federal Rules of Civil Procedure, in particular Rules 26–37

providing for discovery, should be applicable to Board proceedings.

Response. No change has been made. Since section 451(e) of the statute specified certain sections of the Administrative Procedure Act that were to be applicable to Board proceedings, the Commissioner believes that Congress intended only those sections of the APA to apply to Board proceedings. The Commissioner believes that Board proceedings are intended to be less formal, less time-consuming, and less complicated than hearings conducted by administrative law judges or courts of law. For the same reason, the Commissioner does not believe that the Rules of Civil Procedure should be made applicable to Board proceedings.

Section 100d.43 *Intervention.*

Comment. One commenter was concerned that a party who could aid the Board in its disposition of a case might be denied permission to intervene under § 100d.43.

Response. A change has been made. The regulations require approval for intervention so that only those third parties who have a real interest in or contribution to make to Board proceedings may take part in those proceedings. The regulations have been amended so that an applicant who could aid the Board in the disposition of a case will not be denied permission to intervene under this standard.

Comment. Several commenters argued that the regulations should provide for the joinder of local educational agencies in cases involving State-administered programs.

Response. No change has been made. The Board does not have authority under the statute to join local educational agencies that are unwilling to participate in a State educational agency's appeal. Local educational agencies may apply to intervene under § 100d.43 if their interests are at stake.

Section§ 100d.46 *Availability of decisions.*

Comment. One commenter asked whether § 100d.46 limited the provisions of the Freedom of Information Act.

Response. A change has been made. This section of the regulations was not intended to limit the Freedom of Information Act but rather to advise the public that Board decisions are available on request. The regulations have been amended to provide that Board decisions are available on request and with payment of the reproduction costs. This provision is consistent with the Freedom of Information Act.

Section § 100d.49 *Subpoenas.*

Section § 100d.50 *Exchange of information.*

Section § 100d.51 *Evidence.*

Comment. Several commenters suggested that the regulations be changed to require parties to lay proper foundations for the admission of evidence.

Response. No change has been made. Section 100d.51 is intended to allow Panels to (1) conduct proceedings that are less formal and less technical in nature than proceedings conducted by administrative law judges or courts of law, and (2) admit all information that may aid the Panels in reaching their decisions.

Section § 100d.61 *Authority and responsibilities of Panels.*

Comment. Several commenters stated that the Board should have a subpoena power and the authority to order discovery.

Response. No change has been made. The Board does not have statutory authority to issue subpoenas or mandate discovery. Again, the Commissioner believes that Board proceedings are intended to be less formal, less time-consuming, and less complicated than proceedings conducted by administrative law judges or courts of law.

Comment. One commenter stated that the regulations did not cite any statutory authority for § 100d.61.

Response. No change has been made. As noted in section D of the supplementary information in the preamble to the regulations, if all the provisions of a subpart are supported by the same citation, the citation is given at the end of the subpart. Section 100d.61 is supported by the citation given at the end of the subpart on Panel proceedings.

Comment. One commenter was concerned that the dissemination of information concerning a Board proceeding by the appellant might be limited or that proceedings before the Board might be closed to the public.

Response. A change has been made. It is not the Commissioner's intent to either limit the dissemination of information or close Board proceedings to the public. Section 100d.61(a)(7) has been amended to clarify that Board hearings are open to the general public but that the Panel may establish reasonable rules for public attendance and media coverage of the proceedings.

Comment. One commenter suggested that the Panel set a minimum of 30 days for responses unless the recipient indicates that it can respond in a shorter time span.

Response. A change has been made. The Commissioner wishes to allow the Panels maximum flexibility in setting time limits for the submission of written documents. However, the regulations have been amended to provide that the Panel may set reasonable time limits.

Comment. Two commenters objected to the Panel's authority to end an appeal without giving the parties an opportunity for a show cause hearing, and argue that there is no statutory authority for the power.

Response. No change has been made. Section 451(e) of the General Education Provisions Act authorizes the Commissioner to prescribe rules for the conduct of proceedings before the Board. As noted in the preamble to the interim final regulations, the Title I Audit Hearing Board found that parties in several instances were unduly slow in presenting their cases. Panels were given the authority to end appeals so that they might avoid excessive delays in the future. The Commissioner recognizes that the ending of an appeal is a serious remedy, but expects that the remedy will be used judiciously.

Comment. One commenter stated that "Panel interpretations" should be printed in one source and made available.

Response. No change has been made. As provided in § 100d.46 of the regulations, Board decisions are available to the public on request and with payment of reproduction costs.

Section 100d.71 *Written submissions normally required.*

Comment. One commenter said that the audited agency should have the opportunity to request an oral argument or evidentiary hearing. A second commenter said that an oral argument or evidentiary hearing should be schedulde upon a showing of good cause by the recipient. A third commenter said that the regulations should provide standards to be used by Panels to determine the need for oral argument or full hearings.

Response. A change has been made. The regulations have been amended to provide that parties may request oral arguments or evidentiary hearings. The Commissioner believes that determinations as to the need for oral arguments or evidentiary hearings are properly left to the discretion of the Panels hearing the cases.

Section 100d.72 Notice of an oral argument or evidentiary hearing.

Comment. Two commenters argued that notice of oral arguments and evidentiary hearings should be published in the **Federal Register.**

Response. A change has been made. The Commissioner does not believe that it is either necessary in every case or required by law that the Board publish a notice of each hearing in the **Federal Register.** However, the regulations have

been amended to provide that a party or Panel member may request that a notice of a hearing be published in the Federal Register. The Commissioner expects that notices will be published if reasonable requests are made.

Section 100d.73 Conduct of a hearing.

Comment. One commenter thought that a three-member Panel should conduct a hearing. A second commenter asked why a quorum requirement was not imposed for proceedings other than oral arguments and evidentiary hearings.

Response. A change has been made. Under the statute, at least three Board members are assigned to each Panel. The regulations have been amended to make it clear that all the members of a Panel shall participate in the Panel's decision, and that hearings are generally conducted by all Panel members. This provision allows hearings to proceed as scheduled should a Panel member be unable to attend a hearing, but ensures that decisions are made by qll the Panel members.

Section 100d.81 The Panel's decision.

Comment. One commenter suggested that the regulations specify that a majority of the Board be present to approve a finding or decision of a Panel and that a majority approve the findings or decisions.

Response. No change has been made. It was the practice of the Title I Audit Hearing Board to consider the decisions of its Panels to be the decisions of the Board. Since many of the cases are very complex, it would be time-consuming and expensive, as well as administratively difficult, to convene the entire Board or even a majority of Board members to review the decisions of its Panels. The Commissioner therefore believes that it is wise, as well as practical, to continue to allow Panels to make decisions for the Board for submission to the Commissioner.

Section 100d.82 Opportunity to comment on the Panel's decision.

Comment. Two commenters said that post-hearing comments are counterproductive and that the parties should have some assurance the Commissioner will review the comments.

Response. No change has been made. The Commissioner believes that comments will aid the Commissioner in reviewing Board decisions. Parties are not required to submit comments under the regulations, but may take advantage of the opportunity to submit comments for the Commissioner's consideration.

Section 100d.83 The Commissioner's decision.

Comment. One commenter said that it was not clear that the person reviewing the Panel's decision must be the Commissioner.

Response. No change has been made. The word "Commissioner" rather than the phrase "authorized OE official" is used to indicate that the person who reviews the Panel's decision is the Commissioner.

Comment. Two commenters pointed out that there was no statutory basis for stating that the Commissioner would modify or set aside the Panel's decision if that decision were clearly erroneous.

Response. A change has been made. The regulations have been amended to state that the Commissioner may modify or set aside the Panel's decision "for good cause shown," the standard used in the statute.

Section 100d.84 Collection.

Comment. One commenter asked why § 100d.84 on collection was included since it did not pertain directly to Board proceedings. Two commenters pointed out that no statutory authority was cited for the section.

Response. A change has been made. Although the section does not pertain directly to Board proceedings, the Commissioner thought it would be helpful to recipients to indicate the effect of a final decision in audit appeals or withholding or termination proceedings. Citations have been added, which refer readers to Sections 452(e) and 453 of the General Education Provisions Act. Section 452(e) provides that if a Board decision upholds a final audit determination, the decision establishes the amount of the determination as a claim of the United States that the recipient is required to pay. Section 453 authorizes the Commissioner to withhold funds.

Comment. One commenter asked whether local educational agencies would be directly accountable to OE.

Response. Local educational agencies will be directly accountable to OE if they are recipients under OE grants or cooperative agreements. (See the comment and response concerning the definition of "recipient" under the preceding discussion for § 100d.3.)

Section 100d.85 The cease and desist report and order.

Comment. One commenter suggested that the provisions of Section 454(e) of the General Education Provisions Act regarding the enforcement of a cease and desist order be included in the regulations.

Response. A change has been made. Section 100d.86 on enforcement of a cease and desist order has been added to the regulations. The section provides that if after a reasonable period of time, the Commissioner determines that a recipient has not complied with a cease and desist order, the Commissioner may withhold funds or refer the matter to the Attorney General.

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federal register

Thursday
April 3, 1980

Part IV

Department of Health, Education, and Welfare

Office of Education

Consolidated Grant Applications for Insular Areas

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

45 CFR Part 100b

Consolidated Grant Applications for Insular Areas

AGENCY: Office of Education.

ACTION: Final rule.

SUMMARY: The Commissioner of Education issues final regulations governing the submission by an Insular Area of a consolidated grant application for formula grant education programs. These regulations are intended to lessen the administrative burdens on an Insular Area and provide it with greater flexibility in making decisions regarding educational programs. The regulations are authorized under Title V of Pub. L. 95–134.

EFFECTIVE DATE: These regulations are expected to take effect 45 days after they are transmitted to the Congress. Regulations are transmitted to the Congress several days before they are published in the **Federal Register**. If the Congress disapproves the regulations or takes certain adjournments, the effective date is changed by statute. To learn the effective date of these regulations, phone or write the contact person listed below.

FOR FURTHER INFORMATION: Dr. O. Ray Warner, U.S. Office of Education, 400 Maryland Avenue, S.W., Washington, D.C. 20202. Telephone: 202–245–7793.

SUPPLEMENTARY INFORMATION: The Commissioner published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on May 14, 1979 (44 FR 28012). Interested persons were given 45 days to comment on these proposed regulations. During this period a number of comments were received. The paragraphs below summarize those comments and the Commissoner's responses to them.

These final regulations will be a part of the Education Division General Administrative Regulations (EDGAR) which, when published in final form, will replace the Office of Education General Provisions Regulations (45 CFR parts 100, 100a, 100b, 100c, and 100d). The section numbers of these final regulations for consolidated grant applications have been changed to fit within the format of EDGAR. If these consolidated grant regulations are published in the **Federal Register** before EDGAR is published in final form, the final EDGAR will state that these regulations are not revoked by EDGAR.

These final regulations for consolidated grant applications apply only to consolidated grants for Insular Areas beginning with Fiscal Year 1980 appropriation for use in school year 1980–81.

Section 100b.125 Purpose of §§ 100b.125 through 100b.135. (§ 100b.25 of NPRM)

Comment. A commenter asked why the list of programs in this section (covering programs that can be included in a consolidated grant), does not include discretionary grant programs. The commenter suggested that discretionary grants be included since Title V of Pub. L. 95–134 does not limit the types of grants that can be consolidated.

Response. No change is made. The authorizing statute, Title V of Pub. L. 95–134, states that "any or all grants" may be consolidated. This language is broad enough to cover both State formula grants and discretionary grants. However, because of the administrative problems involved in consolidating discretionary grants, it was decided to include only State formula grants.

Section 100b.128 What is a consolidated grant? (§ 100b.28 of NPRM)

Comment. A commenter requested clarification as to whether two consolidated grant applications could be submitted by an Insular Area.

Response. No change is made. An Insular Area can make only one application for and receive only on consolidated grant each year. The consolidated grant includes funds from two or more of the programs listed in § 100b.125. Within the consolidated grant, the funds may be allocated among the programs as the Insular Area determines. The funds cannot be used for programs and purposes outside the consolidated grant. However, an Insular Area can still apply separately for each program it does not wish to include in the consolidated grant (see § 100b.134). These separate programs are not a part of the consolidated grant application authority.

Section 100b.129 How a consolidated grant works. (§ 100b.29 of NPRM)

Comment. A commenter expressed concern that some programs included in a consolidated grant might receive tol little funds or no funds at all if the Insular Area is free to allocate the funds within the consolidated grant as it sees fit. The commenter suggested, for example, that all funds for libraries be put in an account separate from that for elementary and secondary education. In this way programs of low priority will be guaranteed a fair share of the funds.

Response. No change is made. Title V of Pub. L. 95–134 provides that the Insular Area determines the portion of consolidated funds that will be allocated among the programs and purposes in the consolidated grant. Under this authority the decision regarding allocation of funds rests with the Insular Areas. For example, all of the funds could be used for only one of the programs included in the consolidated grant, or the funds could be divided among several of the programs in the grant. There is no statutory requirement that some funds must go to a particular program or category of programs within the consolidated grant.

Section 100b.33 of NPRM Pre-applications for consolidated grants.

Comment. Several commenters stated that the pre-application provision was an additional burden and should not be included in the regulations.

Response. A change is made. This section on pre-applications has been eliminated, since it is inconsistent with the intent of the law to lessen the administrative burdens of application and reporting procedures on the Insular Areas.

Section 100b.133 Reallocation authority. (§ 100b.36 of NPRM)

Comment. Several commenters expressed concern that the 60-day notification requirement before consolidated grant funds can be reallocated is unduly lengthy and undermines the intent of the law to provide maximum flexibility to the Insular Areas. They suggested that it be eliminated.

Response. A change is made to eliminate the 60-day prior notification requirement for reallocation of funds among the programs in the consolidated grant. The regulations now require the Insular Area to notify the Commissioner of any reallocation by submitting an amendment of its application by the Commissioner that includes an update of information originally provided in its application as required in §100b.131(c).

Comment. A commenter requested clarification as to whether programs not included in the application for a consolidated grant could later be included under the reallocation authority of §100b.133.

Response. No change is made. Once an Insular Area receives a consolidated grant, it may reallocate the funds in that grant among the programs and for the purposes in the consolidated grant and stated in its original consolidated grant application. However, in any fiscal year, an Insular Area may not add new programs which were not originally included in its application submitted for that year.

Section 100b.135 Matching. (§ 100b.37 of NPRM)

Comment. Several commenters said that the limitation on the waiver of matching requirements for programs in a consolidated grant was too restrictive and harsh. They felt that this would discourage Insular Areas from applying for a consolidated grant because of the loss of any waiver of the matching requirements for programs in the consolidated grant.

Response. A clarifying change is made to §100b.135. The Commissioner does not automatically grant a waiver of all matching requirements for programs in a consolidated grant. However, a waiver may be granted if the statutory authority for the specific program in the consolidated grant expressly provides for a waiver of the matching requirement and the statutory conditions for a waiver are met.

Comment: A commenter asked that § 100b.135 be clarified as to whether matching requirements for programs in a consolidated grant could be met through the use of services, facilities and other resources provided by the Insular Area.

Response. No change is made. Matching requirements may be met by the use of services, supplies, facilities and other in-kind contributions. These requirements are covered in 45 CFR Part 74, §§ 74.50 through 74.55.

General

Comment: Several commenters suggested that provision be made for situations in which program funds are administered by different agencies. For example, library funds under the Library Services and Construction Act are administered by an agency other than the State department of education. It was suggested that when consolidated programs are administered by different agencies, allocation of funds among the consolidated programs should only be permitted upon the written approval of each agency involved.

Response: No change is made. The primary purposes of the Title V consolidation authority are to simplify application procedures and promote flexibility in allocating the consolidated funds, thus minimizing the administrative burden on the Insular Areas. Further administrative requirements imposed on the applicant could defeat these purposes. It is up to the Insular Area to work out its own allocation procedures among the various administering agencies involved, without directions by the Federal government.

Comment: Several commenters requested guidance on "set aside" requirements in some formula-grant programs that might be included in a consolidated grant. If, for example, a consolidated program required that 15 percent of the program grant funds be set aside for low income students, does this mean 15 percent of the grant funds which would be applicable if there were no consolidation, or does it mean 15 percent of the consolidated grant funds or of the funds actually used for the particular program in the grant?

Response: No change is made. An Insular Area determines how it allocates the total amount of funds in a consolidated grant among the programs and purposes within that consolidated grant. All set aside requirements apply to the amount of funds the Insular Area actually allocates to and uses and administers under the program requiring the set aside after consolidation.

Comment: Several commenters suggested that one advisory council serve as the advisory council for all programs in the consolidated grant that require an advisory council.

Response: No change is made. An Insular Area may, but is not required to, use a single advisory council for any or all programs in a consolidated grant under which the grant funds will be used and administered that require an advisory council. It may use a separate council for each program or use various combinations of councils for programs that require advisory councils. For example, if five programs in the consolidated grant for which funds are used require advisory councils, one council might serve all five programs. Alternatively, one council might cover only three programs and a second council cover the other two programs. Regardless of the choice, however, the advisory council(s) must meet all advisory council requirements in the authorizing statute of the program(s) in the consolidated grant under which the consolidated grant funds are used and administered.

These final regulations also contain minor editorial, organizational, and clarification changes

Authority: These final regulations are issued under the authority of Title V, Pub. L. 95–134.

Dated: March 7, 1980.

William L. Smith,

U.S. Commissioner of Education.

The Commissioner of Education amends Part 100b of Title 45 of the Code of Federal Regulations by adding new §§ 100b.125 through 100b.135 to Subpart B as follows:

Consolidated Grant Applications From Insular Areas

Scope and Applicability

Sec.

100b.125 Purpose of §§ 100b.125 through 100b.135.
100b.126 Regulations that apply.
100b.127 Purpose of a consolidated grant.
100b.128 What is a consolidated grant?
100b.129 How a consolidated grant works.
100b.130 How consolidated grants are made.
100b.131 How to apply for a consolidated grant.
100b.132 Consolidated grant applicant assurances.
100b.133 Reallocation authority.
100b.134 Relationship between consolidated and non-consolidated grants.
100b.135 Matching.

Authority: Title V, Pub. L. 95–134. (48 U.S.C. 1469a)

Consolidated Grant Applications From Insular Areas

Scope and Applicability

§ 100b.125 Purpose of §§ 100b.125 through 100b.135.

(a) The provisions of §§ 100b.125 through 100b.135 set forth requirements for the submission of an application by an Insular Area for the consolidation of two or more grants under the programs listed in the table in paragraph (c) of this section.

(b) For the purpose of §§ 100b.125 through 100b.135, the term "Insular Area" means the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Northern Mariana Islands.

(c)(1) The Commissioner may make an annual consolidated grant to assist an Insular Area in carrying out one or more of the programs in the following table. The table indicates the number of the program in the Catalog of Federal Domestic Assistance (CFDA), the name of the program, the statute that authorizes it, and the regulations that implement it.

CFDA No. and name of program	Authorizing statute	Implementing regulations—title 45, CFR
13.400 State Adult Education Programs	Adult Education Act (except Sections 309, 317 and 318) (20 U.S.C. 1201–1211a)	Part 166.
13.408 Construction of Public Libraries	Title II, Library Services and Construction Act (20 U.S.C. 355a–355c)	Part 130.
13.427 State Operated Programs for Handicapped Children	Title I, Part B, Sections 146–147 of the Elementary and Secondary Education Act (20 U.S.C. 2771–2772).	Parts 116 and 116b.
13.428 Financial Assistance to Local Education Agencies to Meet the Special Needs of Educationally Deprived Children (except Coordination of Migrant Education and Transition of Neglected or Delinquent Children).	Title I, Part A of the Elementary and Secondary Education Act (except Sections 143 and 153) (20 U.S.C. 2701–2754).	Parts 116 and 116a.
13.429 Grants to State Educational Agencies for Programs to Meet Special Educational Needs of Migrant Children.	Title I, Part B, Sections 141–143 of the Elementary and Secondary Education Act (20 U.S.C. 2761–2763).	Parts 116 and 116d.
13.430 Educationally Deprived Children—State administration	Title I, Section 194 of the Elementary and Secondary Education Act (20 U.S.C. 2844)	Part 116.
13.431 Grants to State Agencies for Programs to Meet the Special Educational Needs of Children in Institutions for Neglected or Delinquent Children.	Title I, Part B, Sections 151–153 of the Elementary and Secondary Education Act (20 U.S.C. 2781–2783).	Parts 116 and 116c.
13.449 Assistance to States for Education of Handicapped Children.	Education of Handicapped Act Part B (except Section 619) (20 U.S.C. 1411–1418; 1420)	Part 121a.
13.449 Incentive Grants (Handicapped Pre-school)	Section 619 of the Education of the Handicapped Act (20 U.S.C. 1419)	Part 121.
13.453 Higher Education Land-Grant Colleges and Universities	Second Morrill Act of 1890 (7 U.S.C. 322 and 323)	Part 101.
13.464 Grants for Public Library Services	Title I, Library Services and Construction Act (20 U.S.C. 351–354)	Part 130.
13.465 Interlibrary Cooperation Services Programs	Title III, Library Services and Construction Act (20 U.S.C. 355e–355e–2)	Part 130.
13.491 Community Services and Continuing Education Program (except Special Programs).	Title I, Part A of the Higher Education Act (except Section 106) (20 U.S.C. 1001–1005; 1006–1011).	Part 173 (except Subpart C).
13.493 State Vocational Educational Program	Title I, Part A of the Vocational Education Act (20 U.S.C. 2301–2461	Part 104.
13.494 Consumer and Homemaking Education		Part
13.495 Program Improvement and Support Services		Part
13.499 Persons with Special Needs		Part
13.500 State Advisory Councils		Part
13.595 State Planning Grants		
13.545 Indochinese Refugee Children Program	Title II of the Indochina Refugee Children Assistance Act (20 U.S.C. 1211b)	Part 122a.
13.548 State Student Incentive Grant Program	Sections 415A–415E of the Higher Education Act (20 U.S.C. 1070c through 1070c–4)	Part 192.
13.550 State Post Secondary Education Commissions, Program-Intrastate Planning.	Title XII, Section 1203(a) of the Higher Education Act (20 U.S.C. 1142b(a))	Part 199a.
13.562 Gifted and Talented Children Program	Title IX, Section 901–908 of the Elementary and Secondary Education Act (except Section 905) (20 U.S.C. 3311–3314; 3316–3318).	Part 195.
13.563 Community Schools Program	Title VIII, Section 801–808 of the Elementary and Secondary Education Act (20 U.S.C. 3281–3288).	Part 160.
13.570 Instructional Materials and School Library Resources	Title IV, Part B of the Elementary and Secondary Education Act (20 U.S.C. 3101–3102)	Part 134 and 134a.
13.571 Improvement in Local Educational practices	Title IV, Part C of the Elementary and Secondary Education Act (20 U.S.C. 1801–1832)	Part 134.
13.573 Architectural Barriers Removal	Title VII, Part E of the Higher Education Act (20 U.S.C. 1132d–11)	Part 170.
13.577 Guidance Counseling and Testing	Title IV, Part D of the Elementary and Secondary Education Act (20 U.S.C. 3121–3127)	Part 134.
13.582 Incentive Grants for State Student Financial Assistance Training program.	Section 493C of the Higher Education Act (20 U.S.C. 1088b–3)	Part 178a.
13.585 Educational Information Centers Program	Sections 418A and 418B of the Higher Education Act (20 U.S.C. 1070d–2–1070d–3)	Part 137.
13.596 Career Education—State Allotment Program	Career Education Incentive Act Program (except Sections 10, 11, 12) (20 U.S.C. 2601–2614).	Part 161.
13.599 State Basic Skills Improvement Program	Title II–B of the Elementary and Secondary Education Act (20 U.S.C. 2901–2904)	Part 162.

(2) In any given year, to keep this list of programs current, the Commissioner may update the list by adding or deleting programs upon publication of a notice in the **Federal Register.**

(d) In any given year, through publication of a notice in the **Federal Register,** the Commissioner may announce funded programs (from the current updated list) for which an Insular Area may apply for a grant under the consolidated grant authority.

(48 U.S.C. 1469(a))

§ 100b.126 Regulations that apply.

The following regulations apply to programs of assistance under a consolidated grant:

(a) The regulations for each program included in a consolidated grant for which funds are used and administered; and

(b) The regulations in this part 100b.

(48 U.S.C. 1469a)

§ 100b.127 Purpose of a consolidated grant.

An Insular Area may apply for a consolidated grant for two or more of the educational programs listed in § 100b.125. This procedure is intended to—

(a) Simplify for the Insular Area the application and reporting procedures that would otherwise be required for each of the programs included in the consolidated grant; and

(b) Provide the Insular Area with flexibility in allocating the funds under the consolidated grant to achieve any of the program purposes to be served by the programs consolidated under the grant.

(48 U.S.C. 1469a)

§ 100b.128 What is a consolidated grant?

(a) A consolidated grant under this subpart is a grant to an Insular Area for any two or more of the programs listed in § 100b.125. The amount of the consolidated grant is the sum of the allocations that would be received under each of the programs included in the consolidated grant if there had been no consolidation.

(b) *Example.* Assume that the Virgin Islands applies for a consolidated grant that includes the State programs under the Adult Education Act, the Career Education Incentive Act, and the Migrant and Handicapped programs under the Elementary and Secondary Education Act. If the allocation under the formula for each of these four programs is $150,000, the consolidated grant to the Virgin Islands would be $600,000.

(48 U.S.C. 1469a)

§ 100b.129 How a consolidated grant works.

(a)(1) An Insular Area shall use the funds it receives under a consolidated grant to carry out, in its jursidiction, one or more of the programs included in the grant.

(2) *Example.* Assume that Guam applies for a consolidated grant under the Library Services and Construction Act, The Career Education Incentive Act, and the Adult Education Act and that the sum of its allocations under these programs is $700,000. Guam may choose to allocate this $700,000 among all of the programs authorized under the three acts. Alternatively, it may choose to allocate the entire $700,000 to one specific program under the grant; for example, the Adult Education Act Program.

(b)(1) An Insular Area shall comply with requirements in the authorizing statute and implementing regulations for each program for which funds from the

consolidated grant are used and administered.

(2) *Example.* Assume that American Samoa uses part of the funds under a consolidated grant for the State program under the Career Education Incentive Act. American Samoa need not submit to the Commissioner a State plan that sets out policies and procedures to assure all students equal access to career education programs. However, in carrying out the program, American Samoa must meet and be able to demonstrate compliance with this equal access requirement.

(48 U.S.C. 1469a)

§ 100b.130 How consolidated grants are made.

(a) *Grant awards.* The Commissioner annually makes a single consolidated grant to each Insular Area that meets the requirements of §§ 100b.125 through 100b.135 and each program under which the grant is to be used and administered.

(b) *Notice.* (1) The Commissioner notifies each Insular Area of the programs in § 100b.125 for which funds have been appropriated and can thus be included in the consolidated grant, and of its allotment under each of these programs for the particular fiscal year.

(2) The Commissioner may decide that one or more programs cannot be included in the Consolidated grant if it is determined that the Insular area failed to meet the program objectives stated in its plan for the previous fiscal year in which it carried out the program(s).

(48 U.S.C. 1469a)

§ 100b.131 How to apply for a consolidated grant.

(a) An Insular Area that desires to apply for a grant consolidating any two or more of the programs in § 100b.125 shall submit to the Commissioner an application that—

(1) Contains the assurances in § 100b.132; and

(2) Meets the application content requirements in paragraph (c) of this section.

(b) The submission of an application that contains these requirements and assurances takes the place of separate State plans or other similar documents required by this part or by the authorizing statutes for programs in the consolidated grant.

(c) An Insular Area shall include in its consolidated grant application a program plan that—

(1) Contains a list of programs in § 100b.125 to be included in the consolidated grant;

(2) Sets forth the program or programs in § 100b.125, under which the consolidated grant funds will be used and administered;

(3) Describes the purposes and objectives for the program(s) for which the Insular Area will use the funds received under the consolidated grant during the fiscal year for which it submits the application, including needs of the population that will be met by the consolidation of funds; and

(4) Contains a budget that includes a description of the allocation of funds—including any anticipated carry over funds (authorized under GEPA § 412b) of the program in the consolidated grant from the preceding year—among the programs to be included in the consolidated grant.

(45 U.S.C. 1469a)

§ 100b.132 Consolidated grant application assurances.

(a) An Insular Area shall include in the consolidated grant application the following assurances.

(b) The Insular Area shall assure the Commissioner that it will—

(1) Follow policies and use administrative methods and practices that will insure that non-Federal funds will not be supplanted by Federal funds made available under the authority of the programs in the consolidated grant;

(2) Comply with the requirements (except those relating to the submission of State plans or similar documents) in the authorizing statutes and implementing regulations for the program(s) under which funds are to be used and administered;

(3) Provide for proper and efficient administration of funds in accordance with the authorizing statutes and implementing regulations for those programs under which funds are to be used and administered;

(4) Provide for fiscal control and fund accounting procedures to assure proper disbursement of, and accounting for, Federal funds received under the consolidated grant;

(5) Make one annual report to the Commissioner, as the Commissioner may require, containing information covering the program(s) for which the grant is used and administered, including financial and program performance information required in 45 CFR Part 74, Subparts I and J;

(6) Provide that Federal funds received under the consolidated grant will be under control of—and that title to property acquired with these funds will be in—a public agency, institution, or organization. The public agency shall administer these funds and property;

(7) Keep records and afford access to these records—as the Commissioner finds necessary—in accordance with Section 437 of the General Education Provisions Act (20 U.S.C. 1232f);

(8) Adopt and use methods of monitoring and providing technical assistance to any agencies, organizations, or institutions that carry out the programs under the consolidated grant and enforce any obligations imposed on them under the law;

(9) Evaluate the effectiveness of these programs in meeting the purposes and objectives in the authorizing statutes under which program funds are used and administered;

(10) Conduct evaluations of these programs at intervals and in accordance with procedures the Commissioner may prescribe; and

(11) Provide appropriate opportunities for participation by local agencies, representatives of the groups affected by the program(s), and other interested institutions, organizations, and individuals in planning and operating the program(s).

(c) These assurances remain in effect for the duration of the program or programs they cover.

(48 U.S.C. 1469a)

§ 100b.133 Reallocation authority.

(a) After an Insular Area receives a consolidated grant, it may reallocate the funds in a manner different from the original allocation described in its application. However, the funds cannot be used for purposes that are not authorized under the program or programs in the consolidated grant under which funds are to be used and administered.

(b) *Notice.* If an Insular Area decides to reallocate the funds it receives under a consolidated grant, it shall notify the Commissioner by amending its original application to include an update of the information required under § 100b.131.

(48 U.S.C. 1469a)

§ 100b.134 Relationship between consolidated and non-consolidated grants.

(a) An Insular Area may request any number of programs in § 100b.125 be included in its consolidated grant and apply separately for assistance under any other programs listed in § 100b.125.

(b) Those programs that an Insular Area decides to exclude from consolidation and for which it must submit separate plans or applications, shall be carried out in accordance with the applicable program statutes and regulations. The excluded programs are not subject to the provisions for allocation of funds among programs in a consolidated grant.

(48 U.S.C. 1469a)

100b.135 Matching.

(a) Appropriate statutory and regulatory requirements that govern matching of Federal funds apply to programs funded by a consolidated grant.

(b) The Commissioner does not automatically waive matching requirements for programs included in a consolidated grant.

(c) A waiver may be granted if the statutory authority for the specific program in the consolidated grant expressly provides for a waiver of the matching requirement and statutory conditions for granting a waiver are met.

(48 U.S.C. 1469a)

[FR Doc. 80-9524 Filed 4-2-80; 8:45 am]

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federal register

Thursday
April 3, 1980

Part V

Department of Health, Education, and Welfare

Office of Education

Title I, Elementary and Secondary Education Act; Awarding of Special Grants to Local Educational Agencies

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

45 CFR Part 116a

Title I, Elementary and Secondary Education Act; Awarding of Special Grants to Local Educational Agencies

AGENCY: Office of Education, HEW.

ACTION: Final Regulations.

SUMMARY: The Commissioner of Education issues regulations to govern the awarding of special grants to local educational agencies (LEAs) with especially high concentrations of children from low-income families. These special grants are authorized under the Education Amendments of 1978. The primary purpose of these final regulations is to provide methods for the allocation of remaining special grant funds after all counties which meet the statutory eligibility criteria in a State have received funds according to the statutory formula.

EFFECTIVE DATE: These regulations are expected to take effect 45 days after they are transmitted to the Congress. They are transmitted to the Congress several days before they are published in the **Federal Register**. The effective date is changed by statute if Congress disapproves the regulations or takes certain adjournments. If you want to know the effective date of these regulations, call or write the Office of Education contact person.

FOR FURTHER INFORMATION CONTACT: Ms. Carolyn Horner, Financial Analyst, Division of Education for the Disadvantaged, U.S. Office of Education, 400 Maryland Avenue, S.W., (Room 3642, ROB–3), Washington D.C. 20202. Telephone: 202–245–2638.

SUPPLEMENTARY INFORMATION:

A. Background

As amended by the Education Amendments of 1978 (Pub. L. 95–561), section 117 of title I of the Elementary and Secondary Education Act of 1965 (the Act) authorizes special title I grants for local educational agencies (LEAs) in counties with especially high concentrations of children from low-income families (Sec. 117; 20 U.S.C. 2722).

Section 117(b)(1) of the Act provides that each county—in a State other than Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands—that is eligible for a grant under title I of the Act for any fiscal year is entitled to an additional grant under section 117 for that fiscal year if—

(a) The number of children counted under section 111(c) of the Act for LEAs in the county exceeds five thousand; or

(b) The number of children counted under section 111(c) exceeds 20 percent of the total number of children aged five through seventeen in school districts of the LEAs in the county.

In addition to the above criteria for determining whether a county is entitled to a special grant, section 117(b) provides that no State—other than Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands—shall receive less than one-quarter of 1 percent of the funds appropriated for special grants under section 117. However, the statute does not specify how those grant funds are to be allocated to counties in States in which there are no counties that meet the eligibility criteria in section 117(b)(1).

Similarly, the statute does not specify a method for allocating any remaining special grant funds after all eligible counties in a State have received the amount of special grant funds to which they are entitled under the formula in section 117(b)(3).

B. Overview of the Regulations.

These regulations specify—

(a) Which States are entitled to special grant funds under section 117 of the Act;

(b) The method for determining the amount of special grant funds that each State receives;

(c) The methods for allocating special grant funds to counties within each State that receives these funds;

(d) The method of making the special grants to LEAs; and

(e) The conditions that govern the use of special grant funds.

Sections 116a.34 and 116a.35 of these regulations specify methods for allocating special grant funds in a State that receives the minimum allocation specified by the statute but which—

(a) Has no counties that are eligible for special grant funds under the criteria in the statute; or

(b) Has special grant funds left over after all the eligible counties in that State have received the amount of special grant funds to which they are entitled under the statutory formula.

Those States that are presently receiving the minimum allocation and have either no counties that are eligible for special grant funds or funds left over after all the eligible counties have received the amount of special grant funds to which they are entitled, are—Alaska, Delaware, Idaho, Iowa, Kansas, Maine, Montana, Nebraska, Nevada, New Hampshire, North Dakota, South Dakota, Utah, Vermont, and Wyoming.

In essense, §§ 116a.34 and 116a.35 provide that after each county that meets the statutory eligibility criteria is allocated the amount of special grant funds to which it is entitled under the statutory formula, the Commissioner allocates any remaining special grant funds on the basis of a plan that is—

(a) Proposed by the State educational agency (SEA); and

(b) Approved by the Commissioner.

Under the SEA's plan those remaining funds may be allocated to some counties that would otherwise be ineligible for special grant funds, as well as to some or all of that State's eligible counties already funded under the statutory formula. However, § 116a.36(a) provides that only those counties which are eligible to receive basic grant funds under part A of title I of the Act may receive special grant funds.

If the SEA and the Commissioner cannot agree on an allocation plan, the Commissioner allocates the remaining special grant funds to the counties in the State that are receiving a basic grant under part A of the title I statute. The Commissioner makes this allocation on the basis of the basic grant allocation method in section 111(a) of the Act.

C. Summary of Comments and Responses

A notice of proposed rulemaking (NPRM), which contained proposed regulations to govern the awarding of special grants to LEAs with especially high concentrations of children from low-income families, was published in the **Federal Register** on June 14, 1979 (44 FR 34167). No public meetings were held on the proposed regulations and very few written comments were received. Most of the comments were supportive of the regulations.

The following is a summary of the written comments that requested changes in the regulations and the Office of Education's responses to those comments. The comments and responses are identified by the section number of the proposed regulations to which they refer.

Sections 116a.33–116a.35 Method of computing the State and county allocations.

Comment: One commenter suggested that the NPRM did not specify what methods are used by the Office of Education to determine the minimum amount of special grant funds to be allocated to each State or the amount to be distributed to eligible counties within a State that receives the statutory minimum amount.

Response: Section 116a.33 has been changed to specify that, consistent with section 117(b) of the Act, the minimum amount of special grant funds that each State is entitled to receive is determined by computing one-quarter of one percent of the total special grant appropriation—before setting aside any amounts for State administrative costs and evaluation. In addition, § 116a.34(a) has been changed to clarify that, under the statutory formula, a county that meets the statutory eligibility criteria and is located in a State that receives the minimum allocation of special grant funds is allocated the same proportion, of the total special grant appropriation, as an eligible county that is located in a State which receives more than the minimum allocation.

Section 116a.33 Use of data on free and low-cost meals to determine county eligibility.

Comment: One commenter suggested that data on the number of students receiving free and low-cost meals should be used to determine whether at least 20 percent of the children in the county are from low-income families.

Response: No change has been made in the regulations. The statute requires that the eligibility of a county for special grant funds must be determined on the basis of the number of children counted for the previous year under section 111(c) of title I of the Act. Children are not counted under that section on the basis of whether they receive free or reduced price lunches.

Sections 116a.34 and 116a.35 Reference to "remaining funds" applies only to States receiving the minimum allocation.

Comment: Sections 116a.34 and 116a.35 would be enhanced by explicitly indicating that references to "remaining funds" apply only to those States which receive the minimum allocation of special grant funds.

Response: Section 116a.34(b) has been changed to make this clarification. However, since a State covered by § 116a.35 would have no "remaining funds," no change has been made in that section. Rather, § 116a.35 applies to the entire distribution of special grant funds in States which have no counties that are eligible to receive special grant funds under the statutory formula.

Sections 116a.34(b)(3) and 116a.35(b) Commissioner's disapproval of SEA's plan.

Comment: One commenter suggested that the Commissioner should notify the State in writing of his reasons for disapproving the SEA's plan prior to making the allocation on the basis of the title I basic grant formula.

Response: Sections 116a.34(b)(3) and 116a.35(b) have been changed to provide that the Commissioner must notify the SEA of his reasons for disapproving a plan.

Section 116a.36(a) County eligibility.

Comment: One commenter was concerned that the regulations do not prohibit an SEA from submitting a plan which allocates concentration grant funds to a county that is not eligible to receive basic grant funds under part A of title I.

Response: Section 116a.36(a) of the regulations has been changed to provide that only counties that are eligible to receive basic grant funds under part A, subpart 1, of title I of the Act may receive the special grant funds.

Sections 116a.36 and 116a.37 Criteria for approval of plans.

Comment: One commenter indicated that the language in §§ 116a.36 and 116a.37 regarding the submission and approval of State plans for the distribution of remaining special grant funds is rather vague.

Response: No change has been made. The regulations cannot provide specific criteria that would fit all the individual situations which exist in all the counties within the affected States.

While some States have no areas with high concentrations of children from low-income families, the Congress has specified that the minimum allocation of special grant funds must be made to every State. Additionally, there are wide variations in the distribution of children from low-income families within the States. Therefore, the Commissioner needs the flexibility to take local circumstances into consideration when deciding whether to approve the allocation plans.

Section 116a.36(c) Reallocation.

Comment: One commenter suggested that the regulations should include a requirement that any special grant funds which are refused by an LEA must be reallocated within the county in which that LEA is located.

Response: No change has been made in the regulations. The special grant funds are merely additional title I funds that are allocated under the formula in section 117 of title I of the Act. These funds are added to the amounts provided under the title I basic grant formula and no separate accounting is required for the special grant funds. Therefore, once they are distributed to an LEA, these special grant finds lose their identity and it would not be possible for the SEA to identify the refused funds for reallocation.

Section 116a.38(c) Distrubition of county entitlements among LEAs.

Comment: One commenter suggested that the process for distributing each county's allocation of special grant funds among the LEAs within each county is covered only cursorily by § 116a.38(c). Additional guidance would seem appropriate concerning the selection of data for determining the number of children from low-income families.

Response: Section 116a.38(c) has been changed to paraphrase the procedure that is contained in section 117(b)(5) of the Act. Section 116a.38(c) also specifies that those children that are counted as being from low-income families for purposes of basic grants are the children to be counted as being from low-income families for purposes of distributing the special grant funds to LEAs within the counties that receive these funds.

Section 116a.39 Use of special grant funds.

Comment: One commenter suggested that the regulations provide that special grant funds may be used to provide a title I program in a school that is eligible for title I, but which is not presently being served due to a lack of funds.

Response: No change has been made in the regulations. Section 116a.39 provides that these special funds must be used in accordance with title I program requirements. If an LEA desires to expand its current title I program to serve additional eligible schools, it must submit an amendment to its title I project application to the SEA for approval.

D. Citation of Legal Authority

The reader will find a citation of statutory or other legal authority in parentheses on the line following each substantive provision.

(Catalog of Federal Domestic Assistance No. 13.428; Educationally Deprived Children—Local Educational Agencies)

Dated: February 29, 1980.

William L. Smith,

U.S. Commissioner of Educator.

The Commissioner amends Part 116a of Title 45 of the Code of Federal Regulations by adding §§ 116a.32 through 116a.39 to Subpart C as follows:

PART 116a—FINANCIAL ASSISTANCE TO LOCAL EDUCATIONAL AGENCIES TO MEET THE SPECIAL EDUCATIONAL NEEDS OF EDUCATIONALLY DEPRIVED AND NEGLECTED AND DELINQUENT CHILDREN

Subpart C—Program Requirements

Sec.

116a.32 States entitled to special grant funds under section 117 of the act.
116a.33 Amount of special grant funds that each State receives.
116a.34 Allocation of special grant funds to counties within a State in which at least one county meets the statutory eligibility criteria.
116a.35 Allocation of special grant funds to counties within a State in which no county meets the statutory eligibility criteria.
116a.36 Submission of allocation plans.
116a.37 Commissioner's standards for approval of allocation plans.
116a.38 Method of making special grants.
116a.39 Use of special grant funds.

Authority: Section 117 of the Elementary and Secondary Education Act of 1965, as amended by the Education Amendments of 1978 (Pub. L. 95-561), 20 U.S.C 2722; 92 Stat. 2159-2161.

Subpart C—Program Requirements

§ 116a.32 States entitled to special grant funds under section 117 of the Act.

Section 117(b) of the Act provides that each State—other than Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands—that is eligible for a grant under title I of the Act for any fiscal year is entitled to special grant funds from the amount appropriated under section 117(d) of the Act for the fiscal year.

(Sec. 117(b)(1); 20 U.S.C. 2722(b)(1))

§ 116a.33 Amount of special grant funds that each State receives.

The Commissioner determines the amount of special grant funds that a State receives under section 117 of the Act on the basis of the formula in section 117(b)(3) of the Act. However, each State that is entitled to special grant funds receives at least one-quarter of one percent of the funds appropriated under section 117(d) of the Act for that fiscal year. The minimum amount of special grant funds that each State is entitled to receive is determined by computing one-quarter of one percent of the total special grant appropriation, before setting aside any amounts for State administrative costs and evaluation.

(Sec. 117(b)(1), (2) and (3); 20 U.S.C. 2722(b)(1), (2) and (3))

§ 116a.34 Allocation of special grant funds to counties within a State in which at least one county meets the statutory eligibility criteria.

(a) *General Rule.* Except as provided in paragraph (b) of this section, special grant funds that are awarded to a State in which at least one county meets the eligibility criteria in section 117(b)(1) of the Act are allocated to the eligible counties within the State by the Commissioner in accordance with the formula in section 117(b)(3) of the Act. Under that formula, a county that meets the statutory eligibility criteria and is located in a State that receives the minimum allocation of special grant funds is allocated the same proportion, of the total special grant appropriation, as an eligible county that is located in a State which receives more than the minimum allocation.

(b) *Exceptions.* Except as provided in paragraph (b)(3) of this section, any special grant funds that remain unallocated in a State that received the minimum grant—after all the counties in the State have been allocated the amount of special grant funds to which they are entitled under the statutory formula—are allocated to counties within the State by the Commissioner according to an allocation plan. This allocation plan must—

(1) Be submitted to the Commissioner by the State educational agency (SEA) according to the procedures described in § 116a.36; and

(2) Have the approval of the Commissioner, using the standards described in § 116a.37.

(3) If the SEA does not submit an allocation plan, or the Commissioner disapproves the plan that has been submitted and notifies the SEA of his reasons for disapproving the plan, the Commissioner allocates the remaining special grant funds within the State to those counties that are receiving a basic grant under part A of title I of the Act. The Commissioner makes this allocation on the basic grant allocation method in section 111(a) of the Act.

(Sec. 117(a) and (b); 20 U.S.C. 2722(a) and (b))

§ 116a.35 Allocation of special grant funds to counties within a State in which no county meets the statutory eligibility criteria.

(a) *General Rule.* Except as provided in paragraph (b) of this section, special grant funds that are awarded to a State in which no county meets the eligibility criteria in section 117(b)(1) of the Act are allocated to counties within the State by the Commissioner according to an allocation plan. This allocation plan must—

(1) Be submitted to the Commissioner by the SEA according to the procedures described in § 116a.36; and

(2) Have the approval of the Commissioner, using the standards described in § 116a.37.

(b) *Exception.* If the SEA does not submit an allocation plan or the Commissioner disapproves the plan that has been submitted and notifies the SEA of his reasons for disapproving the plan, the Commissioner allocates the special grant funds within the State to those counties that are receiving a basic grant under part A of title I of the Act. The Commissioner makes this allocation on the basis of the basic grant allocation method in section 111(a) of the Act.

(Sec. 117(a) and (b); 20 U.S.C. 2722(a) and (b))

§ 116a.36 Submission of allocation plans.

(a) *States that may submit an allocation plan.* Each State for which special grant funds remain unallocated—after all the eligible counties in the State have been allocated the amount of special grant funds to which they are entitled under the statutory formula—may submit, for the Commissioner's consideration, a plan for allocation of these unallocated funds to counties within the State. In any event, only those counties that are eligible to receive basic grants under part A of title I of the Act may receive special grant funds.

(b) *Submission through SEA.* Each State that chooses to submit an allocation plan shall do so through its SEA.

(c) *Elements of an allocation plan.* In order to be assured of consideration by the Commissioner, an allocation plan must include—

(1) A list of all counties in the State that meet the eligibility criteria in section 117(b)(1) of the Act, and the amount of special grant funds that each of those counties receives under the formula in section 117(b)(3) of the Act;

(2) A list of all counties in the State, and the amount of special grant funds—if any—that each county would receive under the proposed allocation plan; and

(3) A description of the proposed method for allocating the special grant funds to the counties in the State. This description must include—

(i) The reasons why this method is being proposed;

(ii) How this method meets the statutory purpose of providing special grant funds to those counties with especially high concentrations of children from low-income families.

(iii) The reasons why this method is reasonable in terms of local circumstances, including the distribution

of children from low-income families within counties.

(Sec. 117(a) and (b); 20 U.S.C. 2722(a) and (b))

§ 116a.37 Commissioner's standards for approval of allocation plans.

In deciding whether to approve a proposed allocation plan the Commissioner considers the extent to which the proposed plan—

(a) Meets the requirements in § 116a.36;

(b) Would result in an allocation of special grant funds that meets the statutory purpose of providing special grant funds to those counties with especially high concentrations of children from low-income families; and

(c) Is reasonable in terms of local circumstances, including the distribution of children from low-income families within counties.

(Sec. 117(a) and (b); 20 U.S.C. 2722(a) and (b))

§ 116a.38 Method of making special grants.

(a) The Commissioner includes the amount of special grant funds that a State is entitled to receive during a particular fiscal year, as determined under § 116a.33, in the amount paid to that State under section 191 of the Act for that fiscal year.

(b) Under § 116a.34 or § 116a.35 the Commissioner allocates those special grant funds to counties within each State that receives special grant funds.

(c) Each SEA shall distribute the special grant funds among the local educational agencies (LEAs) in each county that receives those funds on the basis of the current distribution within the county of children aged five to seventeen, inclusive, from low-income families, as determined by using the following procedure:

(1) Each LEA in which 20 percent or more of the children are counted as being from low-income families under the basic grant formula receives a portion of the county's special grant allocation based on the number of children counted under that basic grant formula.

(2) Each LEA in which less than 20 percent of the children are counted as being from low-income families under the basic grant formula receives a portion of the county's special grant allocation based on the number of children counted in that basic grant formula multiplied by a fraction in which the numerator is the percentage of children in the LEA that are counted in the basic grant formula and the denominator is 20.

(Sec. 117(b)(5) and (c)(1); 20 U.S.C. 2722(b)(5) and (c)(1))

§ 116a.39 Use of special grant funds.

Each LEA that receives special grant funds under section 117 of the Act shall use those funds—

(a) To carry out activities that are described in an approved project application for title I funds that the LEA submits under section 121 of the Act; and

(b) In accordance with the title I program requirements in subpart 3 of title I of the Act.

(Sec. 117(c)(2); 20 U.S.C. 2722(c)(2))

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April 3, 1980

Part VI

Department of Health, Education, and Welfare

Office of Education

Grants to State Educational Agencies to Meet the Special Educational Needs of Migratory Children

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

45 CFR Part 116d

Grants to State Educational Agencies to Meet the Special Educational Needs of Migratory Children

AGENCY: Office of Education, HEW.

ACTION: Final regulations.

SUMMARY: The Commissioner issues these final regulations for the program for migratory children under Sections 141–143 of Title I of the Elementary and Secondary Education Act (ESEA). The purpose of the Migrant Education Program is to make Federal funds available to State educational agencies (SEAs) to conduct programs designed to meet the special educational needs of migratory children. These final regulations reflect changes made by the Education Amendments of 1978, changes made as a result of a management review of the program, and changes made in response to comments received on a notice of proposed rulemaking (NPRM) published on May 14, 1979.

EFFECTIVE DATE: These regulations are expected to take effect 45 days after they are transmitted to Congress. Regulations are usually transmitted to Congress several days before they are published in the **Federal Register.** The effective date is changed by statute if Congress disapproves the regulations or takes certain adjournments. If you want to know the effective date of these regulations, call or write the Office of Education contact person.

FOR FURTHER INFORMATION CONTACT: Mr. John Ridgway, Education Program Specialist, Division of Migrant Education, U.S. Office of Education, 400 Maryland Avenue, SW. (FOB–6, Room 2031), Washington, D.C. 20202, telephone (202) 245–2222.

SUPPLEMENTARY INFORMATION:

Background

On November 1, 1978, the Education Amendments of 1978 (Pub. L. 95–561) were signed into law. Title I of this legislation, entitled "Amendment to Title I of the Elementary and Secondary Education Act of 1965," provided a new and substantially expanded text to govern the various title I, ESEA, programs.

In response to the new provisions of these education amendments, revised language for the Migrant Education Program Regulations was drafted and a notice of proposed rulemaking was published in the **Federal Register** on May 14, 1979 (at 44 FR 28184). That NPRM was written to reflect the major changes made by the education amendments with respect to adjustment of the count of children in summer-term projects, special funds for the coordination of migrant education activities, and State and local parent advisory councils.

Additionally, the text and organization of the NPRM were written and fashioned to accomplish the following:

(a) To produce clear and readable regulations.

(b) To reflect a newly-developed format for regulations for State-administered programs.

(c) To clarify existing provisions that still apply.

(d) To propose several program administration revisions, resulting from a management review of the program, with respect to—

(1) The Commissioner's by-pass authority;

(2) The Commissioner's reallocation authority;

(3) The provisions required in a State annual program plan; and

(4) The priority of children for services.

(e) To respond to the recommendations of two major reviews of the agency's program regulations and planning requirements—the Office of Management and Budget's Zero-Based Review of Federal Planning Requirements (November 1977) and the Office of Education's Regulations Reform Project (April 1978).

These final regulations continue to reflect compliance with the objectives of all of the statutory amendments, program studies, and regulations projects referred to in the preceding paragraphs of this section. However, these final regulations also reflect the many public comments—received at the public meetings and in writing—on the proposed regulations and contain some minor changes of an editorial nature.

How To Use These Regulations

These regulations (45 CFR Part 116d) contain only those requirements that apply to the Migrant Education Program alone. The title I General Provisions Regulations (45 CFR Part 116) contain requirements that apply to all title I programs. The Education Division General Administrative Regulations (EDGAR)(45 CFR Parts 100a–100c) contain requirements that apply to all Education Division programs. The HEW General Administration Regulations (45 CFR Part 74) contain requirements that apply to all HEW grant programs.

Policy Manual

The title I statute requires the Office of Education to publish a "policy manual." A separate policy manual will be prepared and published for the Migrant Education Program.

The Commissioner anticipates that the policy manual will consolidate, into one volume, all significant regulations and statutes that govern the Migrant Education Program. The manual will also explain, in fuller and more detailed narrative than the regulations, each Migrant Education Program requirement—with appropriate references to the statute, the regulations, legislative history, court decisions, decisions of the title I Audit Hearing Board (now replaced by the Education Appeal Board), and administrative experience.

The policy manual will be made widely available to State and local program administrators, parent advisory council members, and others involved in the Migrant Education Program.

Public Participation

The Commissioner has undertaken a variety of steps to maximize public participation in the development of these regulation. A notice of proposed rulemaking was published in the **Federal Register** on May 14, 1979. In connection with the proposed rules, the Commissioner sponsored 13 public meetings around the country during June 1979, and established a period, extending through July 13, 1979, for the submission of written comments.

The Commissioner received comments at the public meetings from 158 persons, and also received—in writing—comments from 46 agencies and persons. In total nearly 500 comments were received. Those comments, recommendations, and questions and the responses of the Commissioner are summarized in the appendix, entitled "Summary of Comments and Responses," to these regulations.

Summary of Changes From the Notice of Proposed Rulemaking

These regulations reflect some organizational and wording changes to promote clarity and ease of understanding. For example, most of the section headings are now phrased as questions to which the text of the section responds.

In response to suggestions by the public and other interested parties, these final regulations contain some provisions that were not in the notice of proposed rulemaking. These include certain provisions of the statute governing this program. The purpose of

incorporating these provisions into the final regulations is to enable applicants and grantees to understand better the requirements of this program without having to refer to the statute.

Also, in response to the public comments and in consideration of further program experience, some provisions have been added to the NPRM, some provisions of the NPRM have been clarified, and some have been deleted.

The following list of sections of the final regulations summarizes in greater detail the substantive changes made from the NPRM. Specific responses to comments received on the NPRM are published in the appendix to these final regulations.

Sections 116d.1 and 116d.2 No substantive changes.

Section 116d.3 This section now lists specifically those terms used in these regulations and defined in section 198 of title I of the Act—rather than merely referencing that section.

The definition of "day care services" has been deleted. All title I programs are proposed to be governed by the Federal Interagency Day Care Requirements (FIDCR)(45 CFR Part 71), and the definition of day care and requirements relating to the provisions of those services will be covered by those regulations.

Sections 116d.10 and 116d.11 No substantive changes.

Section 116d.12 This section now includes a listing and description of the substantive kinds of information that must be included in a State annual program plan. The list incorporates, with some changes, the requirements that appeared in the appendix to the NPRM.

The requirement for a needs assessment has been revised to include a requirement that a State annual program plan also "demonstrate that the SEA has obtained an accurate assessment of the cultural and linguistic backgrounds of the children." This language has been continued from the program's previous final regulations.

The requirement for information relative to the State and local parent advisory councils has been revised to require the following additional items:

(a) A description of how the membership of parent advisory councils at the State and operating agency levels will be selected. If the SEA intends to use a method other than an election by the parents of eligible migratory children (e.g., the use of volunteers, selection by program administrators, selection by program teachers), it shall explain why it is necessary to use that alternative method.

(b) A description of the program's strategy for fostering equitable representation of parents of migratory children of different age groups (preschool, elementary, and secondary) and status groups (currently migratory and formerly migratory).

The requirement for information relative to instructional services has been revised to include a requirement for a brief description of the types of services to be provided.

Also, § 116d.12 now includes an additional requirement for information relative to the SEA's plan for training (e.g., inservice training of staff members, training of parent advisory council members).

Section 116d.13 No substantive change.

Section 116d.14 This section was § 116d.24 of the NPRM.

Sections 116d.20 through 116d.22 No substantive changes.

Section 116d.23 This section was § 116d.73 of the NPRM.

Section 116d.24 This section now discusses in further detail the types and scope of projects that the Commissioner might fund under section 143 of title I of the Act. These projects include activities relating to the transfer of school records, parental involvement, resource centers, identification and recruitment of children, secondary school services, information dissemination, and staff development.

This section also clarifies that "the Commissioner consults fully with the SEAs . . . with respect to the types of projects to be proposed, the priority of funding for those projects, evaluation of the effectiveness of existing projects, and the continuation, expansion, or termination of existing projects."

Sections 116d.30 through 116d.33 No substantive changes.

Section 116d.34 This section was § 116d.41 of the NPRM.

Section 116d.40 No substantive change.

Section 116d.41 This section now clarifies the circumstances in which an SEA may consider "by-passing" an LEA and conducting services through a special arrangement with another agency. This section now states that an SEA may consider an LEA "unwilling" to conduct a project if the LEA does not submit an application by a date established by the SEA. The SEA may consider an LEA "unable" to conduct a project if the LEA does not submit, after any needed technical assistance from the SEA, an application of sufficient quality to meet the criteria for approval—established by the SEA through its authority under § 116d.34 of these regulations.

Furthermore, § 116d.41 now states that in accordance with its obligation under § 116d.12(b)(2) to serve "all significant concentrations of currently migratory school-aged children in the State," an SEA shall either provide services directly or implement a special arrangement for services when the non-participation of an LEA affects a "significant concentration" of eligible, currently migratory school-aged children.

Section 116d.50 This section now clarifies that the Migrant Education Program is not governed by the "supplement, not supplant" requirements of section 126(d) of title I of the Act, nor any regulations derived from section 126(d).

Section 116d.51 This section now includes the phrase "particularly any need for improvement in the basic academic subjects" in its explanation of the types of services to be provided. This section also reorders the listing of suggested types of services to reinforce the emphasis placed on basic academic instruction.

Sections 116d.53 and 116d.54 No substantive changes.

Section 116d.55 This section now includes some additional requirements for State and local parent advisory councils. These requirements are adopted from section 125(a) of title I of the Act and include the provision of appropriate information, materials, and training to the councils, and to the extent possible (considering factors such as the duration of the project or the continuing availability of council members), the election of council members by parents of eligible migratory children.

Section 116d.56 No substantive change.

Section 116d.57 This section deletes paragraph (a)(2) of this section as it appeared in the NPRM—relating to the provision of facilities and services to migratory children during times of the year when school is not in "regular" session.

Section 116d.58 This section changes the priority of children for services from that which was indicated in the NPRM. An SEA is now directed to serve, according to their needs, all school-aged migratory children (both currently and formerly migratory) before serving preschool migratory children.

However, if in order to provide title I instructional services to school-aged currently migratory children, it would be necessary to provide day care or similar services to preschool-aged currently migratory children, and no other funds—other than title I funds—are available for that purpose, an SEA or an operating

agency may provide title I instructional services to those preschool children as if those children had a priority higher than school-aged formerly migratory children.

Sections 116d.59 and 116d.60 No substantive changes.

Sections 116d.61 through 116d.63 This information will be included in the Title I General Provisions Regulations (45 CFR Part 116).

Section 116d.64 This section now includes a requirement for an accelerated complaint resolution procedure for short-term migrant education projects. This section also includes language relating to the Commissioner's review of an SEA's resolution of a complaint.

Sections 116d.65 and 116d.70 No substantive changes.

Citation of Legal Authority

The reader will find a citation of statutory or other legal authority in parentheses on the line following each substantive provision.

(Catalog of Federal Domestic Assistance No. 13.429; Educationally Deprived Children-Migrante)

Dated: February 29, 1980.

William L. Smith,

U.S. Commissioner of Education.

The Commissioner revises 45 CFR Part 116d as follows:

PART 116d—GRANTS TO STATE EDUCATIONAL AGENCIES TO MEET THE SPECIAL EDUCATIONAL NEEDS OF MIGRATORY CHILDREN

Subpart A—General

Sec.

116d.1 What is the Migrant Education Program?
116d.2 What regulations apply to the Migrant Education Program?
116d.3 What definitions apply to the Migrant Education Program?
116d.4–116d.9 [Reserved]

Subpart B—How Does a State Apply for a Grant?

116d.10 What documents must a State submit to receive a grant?
116d.11 What Condition must a State meet before submitting its annual program plan?
116d.12 What provisions are required in a State's annual program plan?
116d.13 When must a State's annual program plan be submitted?
116d.14 How is a State's annual program plan reviewed?
116d.15–116d.19 [Reserved]?

Subpart C—How Is a Grant Made to a State?

116d.20 How is the amount available for a State grant determined?
116d.21 How is a State entitlement determined?
116d.22 How are excess funds reallocated?
116d.23 Under what conditions may the Commissioner make a special arrangement for services?
116d.24 What are specail discretionary projects for the coordination of migrant education activities?
116d.25–116d.29 [Reserved]

Subpart D—How Does An Agency Apply to the State for a Subgrant?

116d.30 What documents must an applicant submit to receive a subgrant?
116d.31 [Reserved]
116d.32 What provisions are required in an application for a subgrant?
116d.33 How is an application for a subgrant developed?
116d.34 How is an application for a subgrant reviewed?
116d.35–116d.39 [Reserved]?

Subpart E—How Is a Subgrant Made to an Applicant?

116d.40 How is the amount of a subgrant determined?
116d.41 What are the conditions under which a State may make a special arrangement for services?
116d.42–116d.49 [Reserved]

Subpart F—What Conditions Must Be Met by the State and Its Subgrantees?

Sec.

116d.50 What are the program's fiscal requirements?
116d.51 How may funds be used?
116d.52 [Reserved]
116d.53 What is the requirement for coordination with other groups?
116d.54 What is the requirement for coordination among projects and with other State programs?
116d.55 What are the requirements for parental involvement?
116d.56 How is the eligibility of a participating child documented?
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Authority: Subpart 1, Part B of Title I of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 95–561 (20 U.S.C. 2761–63; 92 Stat. 2177–79), unless otherwise noted.

Subpart A—General

§ 116d.1 What is the Migrant Education Program?

(a) *General.* These regulations govern the Migrant Education Program authorized by Sections 141–143 of Title I of the Elementary and Secondary Education Act (the "Act"). The purposes of the program are to—

(1) Make Federal funds available to State educational agencies (SEAs) to establish or improve State migrant education programs designed to meet the special educational needs of migratory children of migratory agricultural workers or migratory fishers; and

(2) Enable these SEAs to coordinate their State migrant education programs and local projects with similar programs and projects in other States, including the transfer of school records and other information about eligible migratory children.

(b) *Eligibility to participate.* An SEA may apply for a grant to support a State migrant education program. The SEA may operate the program directly, through subgrants to local educational agencies (LEAs), or through special arrangements with public or nonprofit private agencies. Two or more SEAs may apply jointly for a grant to support a migrant education program that benefits eligible migratory children in those States.

(20 U.S.C. 2761, 2762)

§ 116d.2 What regulations apply to the Migrant Education Program?

(a) *Regulations.* The following regulations apply to the Migrant Education Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100b (State-Administered Programs) and 45 CFR Part 100c (Definitions).

(2) The State Administration Regulations in 45 CFR Part 120 (State Administration and Duties)—when applicable.

(3) The Title I General Provisions Regulations in 45 CFR Part 116 (general title I provisions).

(4) The regulations in this part 116d.

(b) *How to use regulations.* The "Introduction to Education Division Programs" at the beginning of EDGAR includes general information to assist recipients in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 2761)

§ 116d.3 What definitions apply to the Migrant Education Program?

(a) *Statutory definitions.* The following terms used in this part are defined in section 198 of title I of the Act:

Equipment
Parent

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 45 CFR Part 100c (EDGAR Definitions):

Applicant
Application
Award
Commissioner
Contract
Grant
Local educational agency
Nonprofit
Preschool
Private
Project
Project period
Public
Secondary school
State
State educational agency
Subgrant

(c) *Definitions in the general title I provisions.* The following terms used in this part are defined in 45 CFR Part 116 (general title I provisions):

Applicant agency
Children

(d) *Program definitions.* The following additional definitions apply specifically to the Migrant Education Program:

(1) "Agricultural activity" means—

(i) Any activity directly related to the production or processing of crops, dairy products, poultry, or livestock for initial commercial sale or as a principal means of personal subsistence;

(ii) Any activity directly related to the cultivation or harvesting of trees; or

(iii) Any activity directly related to fish farms.

(2) "Currently migratory child" means a child—

(i) Whose parent or guardian is a migratory agricultural worker or a migratory fisher; and

(ii) Who has moved within the past 12 months from one school district to another—or, in a State that is comprised of a single school district, has moved from one school administrative area to another—to enable the child, the child's guardian, or a member of the child's immediate family to obtain temporary or seasonal employment in an agricultural or fishing activity. This definition includes a child who has been eligible to be served under the requirements in the preceding sentence, and who, without the parent or guardian, has continued to migrate annually to enable him or her to secure temporary or seasonal employment in an agricultural or fishing activity.

(3) "Fishing activity" means any activity directly related to the catching or processing of fish or shellfish for initial commercial sale or as a principal means of personal subsistence.

(4)(i) "Formerly migratory child" means a child who—

(A) Was eligible to be counted and served as a currently migratory child within the past five years, but is not now a currently migratory child;

(B) Lives in an area served by a migrant education project; and

(C) Has the concurrence of his or her parent or guardian to continue to be considered a migratory child.

(ii) There is a total of six years of program eligibility—a one year status as a "currently migratory child" and up to five additional years as a "formerly migratory child."

(iii) For the purpose of this definition, "area served by a migrant education project" means any portion of the geographic area—

(A) That is within the legally prescribed boundaries of an LEA or a combination of LEAs; and

(B) Within whose boundaries there are currently or formerly migratory children who are receiving migrant education services or who will receive these services within the current grant period of the approved State migrant education program.

(5) "Guardian" means—

(i) A person who has been appointed to be the legal guardian of a child through formal proceedings in accordance with State law; or

(ii) A person who an SEA determines would be appointed to be the legal guardian of a child under the law of the child's domiciliary State if formal guardianship proceedings were undertaken; or

(iii) A person standing in the place of a parent to a child.

(6) "Migratory agricultural worker" means a person who has moved within the past 12 months from one school district to another—or, in a State that is comprised of a single school district, from one school administrative area to another—to enable him or her to obtain temporary or seasonal employment in a fishing activity.

(7) "Migratory fisher" means a person who has moved within the past 12 months from one school district to another—or, in a State that is comprised of a single school district, from one school administrative area to another—to enable him or her to obtain temporary or seasonal employment in a fishing activity.

(8) "Operating agency" means—

(i) An LEA to which an SEA makes a subgrant of migrant education funds; or

(ii) A public or nonprofit private agency with which an SEA makes a special arrangement to carry out a migrant education project.

(20 U.S.C. 2761, 2762)

§§ 116d.4–116d.9 [Reserved]

Subpart B—How Does a State Apply for a Grant?

§ 116d.10 What documents must a State submit to receive a grant?

To receive a grant, an SEA shall submit to the Commissioner the following:

(a) A State monitoring and enforcement plan at least once every three years. The provisions required in a State monitoring and enforcement plan are listed in 45 CFR Part 116 (general title I provisions).

(b) An annual program plan that is detailed enough to allow the Commissioner to determine whether it satisfies the requirements of title I of the Act and all regulations that apply.

(20 U.S.C. 2761, 2762; 20 U.S.C. 2821; 20 U.S.C. 3141; 20 U.S.C. 1232d)

§ 116d.11 What condition must a State meet before submitting its annual program plan?

An applicant SEA may not take into consideration payments of migrant education funds in determining the eligibility of an LEA for State aid or the amount of State aid to be allocated to that agency for the free public education of its children.

(20 U.S.C. 2824)

§ 116d.12 What provisions are required in a State's annual program plan?

An applicant SEA shall provide in its annual program plan the following:

(a) All standard information requested on the form required by § 74.124 of 45 CFR Part 74 (Administration of Grants).

(b) A description of how the SEA will expend program funds during the fiscal year for which the annual program plan is submitted, and how the proposed State migrant education program complies with the Act and all regulations that apply. To enable the Commissioner to evaluate the adequacy of a State's annual program plan, that description must include at least the following information:

(1) *Identification and recruitment.* An SEA shall describe in its plan its

strategy for identifying and recruiting all eligible migratory children in the State.

(2) *Children to be served.* An SEA shall include in its plan a chart showing the estimated number of eligible migratory children expected to reside in the State during the program period and the number of these children to be served—other than with identification and recruitment services or the transfer of records—in the State program. The State shall organize the chart according to the following categories:

(i) Currently migratory school-aged children (elementary or secondary, agricultural or fisher, interstate or intrastate).

(ii) Formerly migratory school-aged children (elementary or secondary, agricultural or fisher).

(iii) Currently migratory preschool children (4 year olds or 3 year olds and under, agricultural or fisher, interstate or intrastate).

(iv) Formerly migratory preschool children (4 year olds or 3 year olds and under, agricultural or fisher).

The SEA shall also assure that it will serve all significant concentrations of currently migratory school-aged children in the State.

(3) *Needs assessment.* An SEA shall include in its plan a brief description of the educational needs of the children eligible to be served. That description must include needs with respect to reading, oral language, mathematics, career awareness, and speaking ability in English, and must demonstrate that the SEA has obtained an accurate assessment of the cultural and linguistic backgrounds of the children. That description must also include needs with respect to supporting services such as health, nutritional, and social services.

(4) *Evaluation.* An SEA shall include in its plan—

(i) The three most important objectives against which program success will be measured; and

(ii) A description of how the measurement will be conducted and how the results will be reported.

(5) *Instructional services.* An SEA shall include in its plan a brief description of—

(i) The types of services to be provided;

(ii) How it will emphasize individualized instruction in conducting its projects; and

(iii) How it will ensure that no migratory child is prevented from benefiting fully from the services provided because he or she does not speak English or has limited English language skills.

(6) *Parent advisory councils.* (i) An SEA shall include in its plan a description of how the required State and local parent advisory councils—

(A) Have participated in the planning of the State's program and its local projects; and

(B) Will be involved in reviewing the operation and evaluation of that approved State program and its local projects.

(ii) An SEA shall also include in its plan—

(A) A description of how the membership of parent advisory councils at the State and operating agency levels will be selected. If the SEA intends to use a method other than an election by parents of eligible migratory children (e.g., the use of volunteers, selection by program administrators, selection by program teachers), it shall explain why it is necessary to use that alternative method; and

(B) A description of the program's strategy for fostering equitable representation of parents of migratory children of different age groups (preschool, elementary, and secondary) and status groups (currently migratory and formerly migratory).

(7) *Parental involvement.* An SEA shall describe in its plan its strategy for involving parents, at the operating agency level, in the education of their children.

(8) *Interstate and intrastate coordination.* An SEA shall describe in its plan its efforts for ensuring continuity in the education of migratory children through—

(i) Working cooperatively with other States that serve migratory children;

(ii) Requiring its operating agencies to cooperate with one another in the education of currently migratory intrastate children; and

(iii) Using fully the migrant student record transfer system including the transfer of the most current academic, health, enrollment, and withdrawal information available for the children served.

(9) *Use of operating agencies.* An SEA shall describe in its plan how it has given careful consideration to the most effective use of LEAs and other public or nonprofit private agencies in operating its projects. This determination does not preclude the possibility that only LEAs will serve as operating agencies.

(10) *Equipment and facilities.* An SEA shall describe in its plan how it will assure that operating agencies make full use of existing equipment and facilities before requesting program funds for those purposes.

(11) *Interagency coordination.* An SEA shall describe in its plan its efforts to coordinate its State migrant education program with programs and services of other public or private agencies, including those projects administered under Section 303 of the Comprehensive Employment and Training Act of 1973 and Title IV of the Economic Opportunity Act of 1964.

(12) *Monitoring and enforcement.* An SEA shall include in its plan a monitoring and enforcement plan (in the format prescribed by the Commissioner) or an appropriate reference to a currently approved plan on file with the Commission.

(13) *Administrative funds.* An SEA shall include in its plan a description of the administrative functions and staff salaries that it proposes to charge to State title I or title V administrative funds, whichever apply.

(14) *Training.* An SEA shall include in its plan a description of its strategy for the inservice training of staff members and the training of parent advisory council members. That description must include information with respect to the following:

(i) The needs and objectives for the training.

(ii) A timeline for the training activities.

(iii) The number and types of staff members, parents, and other persons who will be provided with the training.

(iv) The persons who will be responsible for providing the training.

(v) The estimated cost of the training activities.

(c) A request to use, during the fiscal year for which the annual program plan is submitted, any migrant education funds made available to the SEA for the preceding fiscal year, but not yet obligated.

(20 U.S.C. 2761, 2762)

§ 116d.13 When must a State's annual program plan be submitted?

The Commissioner publishes annually in the **Federal Register** an application notice with the deadline for the receipt of annual program plans.

(20 U.S.C. 2761, 2762; 20 U.S.C. 1232d)

§ 116d.14 How is a State's annual program plan reviewed?

(a) *General criteria.* The Commissioner reviews an SEA's annual program plan and approves it only if the proposed State migrant education program—

(1) Is designed to meet the special educational needs of migratory children eligible to be served; and

(2) Holds reasonable promise of making substantial progress toward meeting those needs.

(b) *Review.* (1) To enable the Commissioner to evaluate the promise of a State annual program plan, that

plan must comply with the informational and content requirements prescribed in § 116d.12 of these regulations. If the Commissioner determines that the criteria for the approval of a State annual program plan have not been satisfied, the Commissioner notifies the SEA and provides it with comments.

(2) The SEA shall revise those parts of its annual program plan that need improvement.

(3) The Commissioner reviews the revised parts of the annual program plan to determine if the criteria for approval have been satisfied.

(20 U.S.C. 2761, 2762)

§ 116d.15–116d.19 [Reserved].

Subpart C—How Is a Grant Made to a State?

§ 116d.20 How is the amount available for a State grant determined?

(a) *General.* (1) The Commissioner determines for each fiscal year the anount of the migrant education grant for which the SEA in each State (including the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands) may apply according to sections 141(b), 156, and 157 of title I of the Act.

(2) The Commissioner determines these amounts on the basis of the number of eligible migratory children in each State as shown by the migrant student record transfer system or any other system the Commissioner believes most accurately reflects the actual number of eligible migratory children.

(b) *Special summer formula.* The Commissioner adjusts the number of eligible migratory children determined under paragraph (a)(2) of this section to reflect the special needs of migratory children for summer projects and the additional costs of operating these projects. The adjustment factor that the Commissioner uses—

(1) Is based on the best available information about the costs of operating summer projects and the number of children participating in these projects;

(2) Is announced annually in the Federal Register; and

(3) May be redetermined at any time.

(20 U.S.C. 2761, 2762; 20 U.S.C. 2791; 20 U.S.C. 2792)

§ 116d.21 How is a State entitlement determined?

(a) *Estimated cost of a State migrant education program.* An applicant SEA is entitled to receive a migrant education grant in the amount the Commissioner determines necessary to carry out the activities in its annual program plan. This amount may not exceed the total amount available to that SEA as determined by the Commissioner under §§ 116d.20 and 116d.22 of these regulations.

(b) *Informational basis for determination of a State entitlement.* (1) The Commissioner determines the amount of the migrant education grant that an SEA is entitled to receive on the basis of information available at the time that the annual program plan is approved. This information includes the number of children to be served and the nature and scope of the State migrant education program.

(2) The Commissioner may adjust this amount later in the fiscal year on the basis of additional information available at that time.

(c) *Consideration of the costs of past and future activities and the amount of funds available.* In determining the amount of the migrant education grant to which an SEA is entitled, the Commissioner considers the following information:

(1) The amount for which the SEA may apply, as determined under § 116d.20.

(2) The cost of completed program activities under previous grants and the number of children who were served.

(3) The estimated cost of activities not yet begun under the preceding grant and the number of children who will be served.

(4) In the case of a request for an increase in the grant that the Commissioner previously determined necessary to carry out the activities in the approved annual program plan, the estimated cost of providing additional program services before the end of the grant period and the number of children who would receive additional services.

(5) The unused amount of the SEA's preceding migrant education grant.

(6) Any other relevant information.

(20 U.S.C. 2761, 2762)

§ 116d.22 How are excess funds reallocated?

(a) *General.* If the Commissioner determines that the amount for which an SEA may apply, as determined under § 116d.20, is more than the amount needed to carry out the activities in its annual program plan, the Commissioner may allocate some or all of this excess to one or more other SEAs whose amounts available under § 116d.20 would otherwise be insufficient to serve the eligible migratory children in those States.

(b) *Determination of excess funds.* Circumstances in which the Commissioner may determine that an SEA has excess funds include the following:

(1) When the SEA determines from its own information that the amount available to it exceeds the amount it needs to carry out the activities in its annual program plan and notifies the Commissioner of the excess funds.

(2) When for the preceding two fiscal years, the SEA has carried over from one year to the next more than 15 percent of its migrant education grant.

(3) When the Commissioner obtains—later in the fiscal year—information that support a redetermination of the SEA's entitlement.

(c) *Notification to the State.* (1) *Notification.* The Commissioner notifies an SEA if part of the amount available to it is being considered for reallocation.

(2) *State's opportunity to explain.*

(i) The SEA may make a request to the Commissioner for an opportunity to explain why a reallocation is not warranted.

(ii) This request must be submitted within 15 days of the SEA's receipt of the Commissioner's notification of possible reallocation.

(3) *Reallocation decision.* If the SEA does not request an opportunity to explain, or if—after the explanation—the Commissioner determined that the total amount available to the SEA for that fiscal year exceeds the amount needed, the Commissioner may reallocate part of that total amount.

(20 U.S.C. 2761, 2762)

§ 116d.23 Under what conditions may the Commissioner make a special arrangement for services?

(a) *General.* Through a grant or contract, the Commissioner may make a special arrangement with a public or nonprofit private agency to carry out the purposes of the Migrant Education Program if the Commissioner determines that—

(1) An SEA is unwilling or unable to conduct an educational program for the migratory children who are eligible to be served;

(2) The arrangement would result in more efficient and economic administration of the program; or

(3) The arrangement would add substantially to the welfare or educational attainment of the migratory children who are eligible to be served.

(b) *Basis for determination.* The Commissioner may determine that an SEA is unwilling or unable to conduct an eduational program for the migratory children who are eligible to be served if—

(1) The SEA fails to submit an annual program plan by the date established in the Federal Register; or

(2) The SEA fails to submit, after receiving any necessary technical assistance from the Commissioner, an annual program plan that satisfies the criteria for approval.

(c) *Availability of funds.* The Commissioner may use all or part of the total amount of the migrant education grant available to the affected State—under § 116d.20 of these regulations—to make one or more special arrangements.

(d) *Notice to the State.* The Commissioner does not make a special arrangement until after the affected SEA has had reasonable notice and an opportunity for a hearing.

(20 U.S.C. 2761; 20 U.S.C. 2832)

§ 116d.24 What are special discretionary projects for the coordination of migrant education activities?

(a) *General.* In accordance with section 143 of title I of the Act, the Commissioner may, in full consultation with the States, make grants or contracts with an SEA or SEAs to—

(1) Operate a system for the transfer of school records and other information about migratory children; or

(2) Carry out other activities designed to improve the interstate and intrastate coordination of migrant education projects; or

(3) Both (1) and (2).

(b) *Types of projects.* The special coordination projects authorized by section 143 of title I of the Act and paragraph (a) of this section may include, but are not limited to, activities such as the following:

(1) *Transfer of school records.* This type of project would provide for the administration of a system for the transfer of school records and other information about migratory children. The purpose of the system would be to facilitate coordination of projects among school districts and among States and to enhance the continuity of education for migratory children.

(2) *Parental Involvement.* This type of project might include activities such as—

(i) Designing and establishing interstate (i.e., regional) parent advisory councils;

(ii) Conducting research and development activities with respect to effective designs of parental involvement and the training of parent advisory council members; and

(iii) Providing technical assistance to SEAs and LEAs in working with and training parent advisory council members.

(3) *Resource centers.* This type of project might include activities such as—

(i) Evaluating the effectiveness and applicability of materials (such as instruments and procedures for needs assessment surveys, student assessment instruments, curricular materials, and evaluation methods and materials) developed for the Migrant Education Program;

(ii) Disseminating the most appropriate of these materials; and

(iii) Disseminating information about the availability of experts and other resources in the field of migrant education.

(4) *Identification and recruitment of children.* This type of project might include activities such as—

(i) Evaluating State identification and recruitment strategies;

(ii) Developing a coordinated national program for the identification and recruitment of migratory children, including the design of model strategies and instruments; and

(iii) Providing technical assistance to SEAs in the design and implementation of effective child identification and recruitment strategies.

(5) *Secondary school services.* This type of project might include activities such as—

(i) Assessing the needs of secondary school-level migratory children and the degree to which these needs are currently being met;

(ii) Evaluating project designs and materials from Migrant Education Program secondary school projects, such as career education, vocational instruction, and dropout prevention projects, and the transfer of school credits; and

(iii) Providing technical assistance to SEAs and LEAs in the design and implementation of secondary school projects for migratory children.

(6) *Information and dissemination center.* This type of project might include acitivities such as—

(i) Conducting a national awareness project for the Migrant Education Program—directed to the parents of eligible children, other parents and adults, the general education and educational research communities, and other family and child service agencies; and

(ii) Developing and disseminating national Migrant Education Program information materials.

(7) *Staff development services.* This type of project might include activities such as designing, developing, and implementing interstate training strategies for Migrant Education Program staff members.

(c) *Project awards.* Awards to an SEA or SEAs under section 143 of title I of the Act may be made by grant or contract.

(d) *Source of funds.* The Commissioner, in accordance with section 143 of title I of the Act and these regulations, reserves funds for the purposes described in subsection (a).

(e) *Consultation with SEAs.* The Commissioner consults fully with the SEAs participating in the Migrant Education Program with respect to the types of projects to be conducted, the priority of funding for these projects, the evaluation of existing projects, and the continuation, expansion, or termination of existing projects.

(20 U.S.C. 2763)

§§ 116d.25–116d.29 [Reserved]

Subpart D—How Does An Agency Apply to the State for a Subgrant?

§§ 116d.30 What documents must an applicant submit to receive a subgrant?

To receive a subgrant, an LEA shall submit to the SEA a project application—for a period of not more than three years—that is detailed enough to allow the SEA to determine if the proposed project satisfies the requirements of title I of the Act, all regulations that apply, and the provisions of the approved State annual program plan.

(20 U.S.C. 2761, 2762; 20 U.S.C. 3142; 20 U.S.C. 1232e)

§ 116d.31 [Reserved]

§ 116d.32 What provisions are required in an application for a subgrant?

An SEA shall require each LEA that desires to participate in the State migrant education program to submit to it the application required by § 116d.30 of these regulations. In its application the LEA shall include the following:

(a) A description of the project to be carried out by the LEA.

(b) An explanation of the relationship between the project and the State annual program plan.

(c) The objectives to be achieved for each grade group.

(d)(1) The estimated number of eligible migratory children living in the area to be served by the project, and the estimated number of these children who will be served.

(2) If the LEA proposes to provide migrant education program services—other than the identification and recruitment of children and the transfer of records—to fewer eligible migratory children than the number of these eligible children living in the area, it shall explain why.

(e) A description of each service to be provided and its estimated cost.

(f) The types and number of staff to be employed.

(g) A description of how the LEA will comply with § 116d.55 of these regulations concerning parental involvement, including how the members of its parent advisory council will be selected.

(h) A description of how the LEA will coordinate with other agencies—in accordance with section 124(f)(1) of title I of the Act.

(i) A description of how the LEA ensures that no eligible migratory child will be prevented from benefiting fully from the project's services because he or she does not speak English or has limited English-language skills.

(j) Any other relevant information required by the SEA.

(20 U.S.C. 2761, 2762)

116d.33 How is an application for a subgrant developed?

An LEA that applies for a subgrant shall prepare and submit to the SEA its application as follows:

(a) In the form required by the SEA.

(b) According to sections 124 (i) and (j) of title I of the Act, section 502(b)(5) of title V of the Act, and section 436(b)(5) of the General Education Provisions Act that require the participation of parents, teachers, and local school boards in the planning of projects.

(c) According to any other instructions provided by the SEA.

(20 U.S.C. 2734; 20 U.S.C. 2761, 2762; 20 U.S.C. 3142; 20 U.S.C. 1232e)

§ 116d.34 How is an application for a subgrant reviewed?

An SEA shall approve the application of an LEA only if it—

(a) Complies with the requirements of title I of the Act, all regulations that apply, and the provisions of the approved State annual program plan; and

(b) Satisfies all other relevant requirements and criteria of approval that the SEA specifies.

(20 U.S.C. 2761, 2762; 20 U.S.C. 2811)

§ 116d.35–116d.39 [Reserved]

Subpart E—How Is a Subgrant Made to an Applicant?

§ 116d.40 How is the amount of a subgrant determined?

An SEA shall determine the amount of a subgrant to an LEA based on the following criteria:

(a) The number of children to be served.

(b) The nature and scope of the proposed project.

(c) Any other criteria developed by the SEA relevant to matters of the State migrant education program, including its priorities concerning ages and grade levels of children to be served, areas of the State to be served, and types of services to be provided.

(20 U.S.C. 2761, 2762)

§ 116d.41 What are the conditions under which a State may make a special arrangement for services?

(a) *General.* An SEA may make a special arrangement with a public or nonprofit private agency or agencies to carry out a project if the SEA determines that—

(1) An LEA is unable or unwilling to conduct a project;

(2) The arrangement would result in more efficient and economic administration of the State migrant education program; or

(3) The arrangement would add substantially to the welfare or educational attainment of the migratory children who are eligible to be served.

(b) *Basis for determination.* (1) An SEA may determine that an LEA is unwilling or unable to conduct a project for the migratory children who are eligible to be served if—

(i) The LEA fails to submit an application by the date established by the SEA; or

(ii) The LEA fails to submit, after receiving any needed technical assistance from the SEA, an application that satisfies the criteria for approval established by the SEA.

(2) The SEA shall—for each area of the State with a significant concentration of eligible currently migratory school-aged children—either provide services directly, through a subgrant with an LEA, or through a special arrangment with a public or nonprofit private agency.

(c) *Requirements for a special arrangement.* If an SEA makes a special arrangement for service through a public or nonprofit private agency, the SEA shall require that operating agency or apply for funds and administer its project in a manner consistent with the provisions relating to LEAs as subgrantees, as prescribed in subparts D, E, and F of these regulations.

(20 U.S.C. 2761, 2762)

§§ 116d.42—116d.49 [Reserved]

Subpart F—What Conditions Must Be Met by the State and Its Subgrantees?

§ 116d.50 What are the program's fiscal requirements?

(a) *General.* An SEA and its operating agencies shall comply with the requirements of title I of the Act and 45 CFR Part 116 (general title I provisions) relating to the—

(1) Maintenance of fiscal effort;

(2) Restriction limiting the use of program funds to the excess cost of projects;

(3) Requirements that program funds supplement and not supplant non-Federal funds (except for those requirements implementing section 126(d) of title I of the Act);

(4) Public control of funds; and

(5) Use of program funds for staffing, parent council activities, training, planning grants, and cooperative projects.

(b) *State control of funds.* (1) *Adjustment of subgrants.* To promote the efficient administration of the State migrant education program, the SEA shall issue a rule that permits the SEA to make appropriate adjustments to its subgrants and special arrangements to avoid paying funds to an operating agency in excess of that agency's actual needs.

(2) *Adjustment procedures.*

(i) These adjustments shall be based on periodic reports of the operating agency's actual expenditures.

(ii) Following an adjustment, the SEA may increase the funding of one or more other operating agencies that demonstrate a need for additional funds.

(iii) An operating agency affected by an adjustment shall amend its project application to reflect that adjustment and shall note the adjustment in its final financial report.

(c) *Title and control of property.* (1) *State control.* Except as provided by paragraph (c)(2) of this section, and notwithstanding the requirements of 45 CFR Part 116 (general title I provisions), an SEA shall maintain title to and control over all property that is acquired with its migrant education funds.

(2) *Special requirements.* (i) If a State law requires that an agency of the State other than the SEA maintain title to, or control over, property that is acquired with migrant education funds, the SEA shall arrange for those functions to be carried out by the appropriate agency. That State agency shall then be responsible for the exercise of those functions.

(ii) However, the SEA shall retain the right to use, move, or otherwise dispose of this property in a manner designed to carry out most effectively the State migrant education program.

(d) *Source of funds for State administration.* (1) *State administrative funds.* To administer its title I program for migratory children, the SEA shall use funds provided under section 194 of title I of the Act or section 510 of title V of

the Act, whichever applies. It shall use these funds of perform those functions that are the same or similar to the administrative functions carried out by the SEA in connection with projects under 45 CFR Parts 116a (LEA projects in low-income areas), 116b (State agency projects for handicapped children), and 116c (State agency projects for neglected or delinquent children). These functions include the—

(i) Preparation of the SEA's monitoring and enforcement plan and annual program plan to be submitted to the Commissioner;

(ii) Design, publication, and distribution to operating agencies of the application, evaluation, performance, and financial report forms, and the appropriate instructions;

(iii) Provision of technical assistance to operating agencies in developing their applications;

(iv) Review of applications and reports from operating agencies;

(v) Monitoring of projects for compliance with the State migrant education program;

(vi) Design, publication, and final preparation of the evaluation, performance, and financial reports that the SEA submits to the Commissioner;

(vii) Maintenance of fiscal control and accounting procedures;

(viii) Dissemination of information; and

(ix) Coordination of the State migrant education program—and facilitation of the coordination of local projects—with other public and private agencies.

(2) *Program funds.* To administer its title I program for migratory children, an SEA may use title I funds made available for State migrant education programs under section 141 of title I of the Act only to perform those functions that are unique to the Migrant Education Program or that are the same or similar to the functions performed by LEAs in the State under 45 CFR Part 116a. These functions include the—

(i) State-wide identification and recruitment of eligible migratory children;

(ii) Interstate and intrastate coordination of the State migrant education program and its local projects with other State programs and local projects;

(iii) Coordination of project level activities with other public and private agencies;

(iv) Implementation of the migrant student record transfer system;

(v) Processing of reports that are submitted by the operating agencies to the SEA;

(vi) Maintenance of inventories of property acquired with migrant education funds;

(vii) Negotiation and awarding of contracts; and

(viii) Evaluation activities of the State migrant education program other than the design of evaluation report forms and the final preparation of the SEA's evaluation report to the Commissioner.

(20 U.S.C. 2761, 2762; 20 U.S.C. 2844; 20 U.S.C. 3150)

§ 116d.51 How may funds be used?

(a) *General.* An SEA may use funds made available for the State migrant education program under section 141 of title I of the Act only for the following:

(1) To perform the functions described in § 116d.50(d)(2) of these regulations relating to administrative functions that are unique to the State migrant education program.

(2) To support approved projects designed to meet the special educational needs of eligible migratory children.

(b) *Types of services.* The projects referred to in paragraph (a)(2) of this section must be designed to meet the special educational needs of the migratory children eligible to be served, particularly any need for improvement in the basic academic subjects. The project's services must be supplementary to those services provided with State and local funds. These projects may include the following types of services:

(1) Academic instruction.

(2) Remedial and compensatory instruction.

(3) Bilingual and multicultural instruction.

(4) Vocational instruction and career education services.

(5) Special guidance, counseling, and testing services.

(6) Preschool services.

(7) Other educational services that are not available to eligible migratory children in adequate quantity or quality.

(8) The acquisition of instructional materials—such as books and other printed or audiovisual materials—and equipment.

(9) Other services that meet the purposes of the Migrant Education Program.

(20 U.S.C. 2761, 2762)

§ 116d.52 [Reserved]

§ 116d.53 What is the requirement for coordination with other groups?

An SEA shall plan and operate the activities in its annual program plan in coordination with—

(a) Migrant and seasonal farmworker projects administered under Section 303 of the Comprehensive Employment and Training Act of 1973;

(b) Migrant and seasonal farmworker projects administered under Title IV of the Economic Opportunity Act of 1964; and

(c) Projects of any other group or agency that provides benefits or services to migrants.

(20 U.S.C. 2761, 2762; 20 U.S.C. 2734)

§ 116d.54 What is the requirement for coordination among projects and with other State programs?

An SEA shall develop and implement a plan to promote continuity in the education of eligible migratory children. The SEA shall include in this plan appropriate procedures for—

(a) Coordinating projects within the State. This may include the interdistrict transfer of course credits and the intrastate sharing of project planning, evaluation, curricular, and staff training materials;

(b) Coordinating the State migrant education program with similar programs in other States. This may include the interstate transfer of course credits and the interstate sharing of program planning, evaluation, curricular, and staff training materials; and

(c) Using fully the migrant student record transfer system, including the transfer—in an appropriate manner according to instructions of the Commissioner—of the most current academic, health, enrollment, and withdrawal information available for the children served.

(20 U.S.C. 2761, 2762)

§ 116d.55 What are the requirements for parental involvement?

(a) *General.* An SEA shall take the necessary steps to assure effective parental involvement throughout the State migrant education program.

(b) *Requirements for an operating agency advisory council.* An SEA shall require each operating agency to—

(1) Solicit actively parental involvement in the planning, operation, and evaluation of its project; and

(2) Establish and consult a parent advisory council.

(c) *Requirements for the State advisory council.* An SEA shall—

(1) Solicit actively parental involvement in the planning, operation, and evaluation of its State migrant education program; and

(2) Establish and consult a parent advisory council.

(d) *General council requirements.* (1) Each State and operating agency parent advisory council must be composed of people who know the needs of migratory children.

(2) To the extent possible (considering factors such as the duration of the project or the continuing availability of council members), the membership of each council must be elected by parents of eligible migratory children.

(3) A majority of the members of each council must be parents of children who are being served or who are eligible to be served.

(4) An SEA and each operating agency shall give its parent advisory council the responsibility for advising it with respect to the planning, implementation, and evaluation of the State program or the local project, whichever applies.

(5) An SEA and each operating agency shall provide, without charge, to its parent advisory council and, upon request, to each member of its parent advisory council, a copy of the title I migrant education statute and any applicable Federal or State regulations or guidelines.

(6) An SEA and each operating agency shall provide, without charge, to its parent advisory council any report resulting from Federal or State auditing, monitoring, or evaluation of the State program or the local project, whichever applies.

(7) An SEA and, to the extent possible, each operating agency shall provide a program for training the members of its advisory council to carry out their responsibilities. The training program—

(i) Must be planned in full consultation with members of the parent advisory council;

(ii) Must provide each member of the advisory council with appropriate training materials; and

(iii) May be supported by migrant education funds, including the expenses associated with the attendance of members at training sessions.

(8) An operating agency that provides services on a State-wide basis need not create its own advisory council. However, that agency shall consult the State parent advisory council required by paragraph (c) of this section.

(20 U.S.C. 2761, 2762; 20 U.S.C. 2735)

§ 116d.56 How is the eligibility of a participating child documented?

(a) *Basic requirement.* An SEA or an operating agency may not count a child under § 116d.20 or provide program services to that child until the agency has—

(1) Determined that the child is either a currently or formerly migratory child as defined under § 116d.3(d); and

(2) Made a written record of the basis on which the child's eligibility was determined.

(b) *Informational basis.* (1) In determining eligibility, an SEA or an operating agency may rely on credible information from any source, including that provided by the child or his or her parent or guardian.

(2) An SEA or an operating agency is not required to obtain documentary proof of either the child's eligibility or civil status from the child or his or her parent or guardian.

(20 U.S.C. 2761, 2762)

§ 116d.57 What is the requirement for comparable access for migratory children?

(a) *Basic requirement.* In order to participate in the State migrant education program, an LEA shall provide migratory children with access to State and locally funded educational facilities and services comparable to those ordinarily provided to non-migratory children living in the attendance area in which migratory children are being served.

(b) *Relation to other requirements.* The provisions of paragraph (a) of this section do not modify—

(1) The requirements of 45 CFR Part 116 (general title I provisions) relating to supplanting State and local funds and services that the applicant is required by law to provide to all children or specifically to migratory children; or

(2) The requirement in 45 CFR Part 116a relating to the maintenance of comparability in school attendance areas conducting projects that are funded under 45 CFR Part 116a and that serve migratory children.

(c) *Definition of comparable access.* The requirements of paragraph (a) are satisfied only if an LEA gives migratory children access to all State or locally funded instructional, health, nutritional, transportation, and other services on the same basis as the LEA provides to non-migratory children residing in the attendance area where migratory children are being served.

(20 U.S.C. 2761, 2762)

§ 116d.58 Under what conditions may services be provided to preschool and formerly migratory children?

(a) *Preschool migratory children.* (1) An SEA may support a project that provides instructional or supporting services to preschool migratory children if the participation of these children does not—

(i) Prevent the participation of school-aged migratory children; or

(ii) Dilute the effectiveness of the State migrant education program for these school-aged children.

(2) An instructional project that is designed to meet the special educational needs of preschool migratory children is a project that is—

(i) Comprised primarily of activities designed to increase the children's readiness for instruciton in the basic academic skills;

(ii) Limited to children who are under the age at which public elementary education is provided under State law; and

(iii) Conducted by or under the direct supervision of a person who is qualified under State law to conduct the activities referred to in paragraph (a)(2)(i).

(b) *Formerly migratory children.* (1) An SEA may support a project that provides instructional or supporting services to formerly migratory children if the participation of those children does not—

(i) Prevent the participation of currently migratory children of the same age group (i.e., preschool or school-aged); or

(ii) Dilute the effectiveness of the State migrant education program for those currently migratory children.

(2) A formerly migratory child may participate in a project that—

(i) Also includes currently migratory children; or

(ii) Includes only formerly migratory children.

(c) *Service priorities.* An SEA and its operating agencies shall serve eligible migratory children—according to their needs—in the following order:

(1) School-aged currently migratory children.

(2) School-aged formerly migratory children.

(3) Preschool currently migratory children.

(4) Preschool formerly migratory children.

However, if in order to provide title I instructional services to school-aged currently migratory children, it would be necessary to provide day care or similar services to preschool-aged currently migratory children, and no other funds—other than title I funds—are available for that purpose, an SEA or an operating agency may provide title I instructional services instead of day care services to those preschool children as if those children had a priority higher than school-aged formerly migratory children.

(20 U.S.C. 2761, 2762)

§ 116d.59 Under what conditions may supporting services be provided?

(a) *General.* An SEA or an operating agency may provide health, nutritional, social, or other supporting services with migrant education funds if—

(1) These services are necessary to enable eligible migratory children to

participate effectively in instructional services; and

(2) In the case of an operating agency, that agency has first—

(i) Requested assistance from the SEA in locating and using other Federal and State programs to provide these services; and

(ii) Determined that funds or services from other programs are not available or are inadequate to meet the needs of the participating migratory children.

(b) *Day care services.* (1) *Condition for approval.* An SEA or an operating agency may provide day care services for eligible migratory children only as a supporting service to eligible preschool or school-aged migratory children and only with the specific approval of the Commissioner.

(2) *Request to the Commissioner.* An SEA that desires to use program funds for day care services shall include a request in its annual program plan and shall provide adequate information to allow the Commissioner to determine that the proposed day care services are—

(i) Not available from any other source;

(ii) Necessary to enable eligible preschool or school-aged migratory children to receive instructional services supported under title I; and

(iii) Not extravagant in relation to—

(A) The costs;

(B) The number of children who will receive day care services; and

(C) The effect that the availability of these services will have on the participation of eligible migratory children in instructional services supported by title I funds.

(20 U.S.C. 2761, 2762; 20 U.S.C. 2734)

Subpart G—What Are the Administrative Responsibilities of the State?

§ 116d.60 The State is responsible for reviewing and approving applications.

(a) *State review and approval.* An SEA shall review all applications from operating agencies and may approve only those that—

(1) Satisfy the criteria established by the SEA; and

(2) Comply with the requirements of title I of the Act, all regulations that apply, and the provisions of the approved State annual program plan.

(b) *Copy to the Commissioner.* If the Commissioner requests a copy of an approved application, including any amendment, the SEA shall send that copy within 10 days of the request.

(20 U.S.C. 2761, 2762; 20 U.S.C. 2811)

§ 116d.61 The State is responsible for monitoring and enforcement.

[See the Title I General Provisions Regulations (45 CFR Part 116).]

§ 116d.62 Under what conditions must the State withhold funds?

[See the Title I General Provisions Regulations (45 CFR Part 116).]

§ 116d.63 How must the State conduct and resolve audits?

[See the Title I General Provisions Regulations (45 CFR Part 116).]

§ 116d.64 How must the State resolve complaints?

(a) *General.* An SEA shall develop and implement procedures—for resolving complaints—that comply with all of the requirements prescribed by 45 CFR Part 116 (general title I provisions).

(b) *Special procedure.* An SEA shall establish an appropriate accelerated procedure for resolving complaints regarding short-term migrant education projects—such as those that operate for fewer than 90 days.

(c) *Commissioner's review.* The Commissioner may review an SEA's resolution of a complaint. The procedures governing the Commissioner's review of an SEA's resolution of a complaint where published in the **Federal Register** on October 23, 1979 (44 FR 61109). After the review, the Commissioner may, when appropriate—

(1) Issue an order to the SEA prescribing additional actions to be taken by that agency; or

(2) Implement a special arrangement as stated under § 116d.24.

(20 U.S.C. 2761, 2762; 20 U.S.C. 2815; 20 U.S.C. 3147)

§ 116d.65 How must the State evaluate the program?

(a) *General.* An SEA shall submit to the Commissioner an annual report evaluating the effectiveness of its State-wide migrant education program.

(b) *Sampling.* To minimize the reporting burden on projects, the SEA may select each year a representative sample of projects, schools, and children to participate in the State-wide evaluation. The selection of this sample must be done in accordance with any criteria published by the Commissioner.

(20 U.S.C. 2761, 2762; 20 U.S.C. 2822; 20 U.S.C. 3141; 20 U.S.C. 1232d)

§§ 116d.64–116d.69 [Reserved].

Subpart H—What Compliance Procedures Are Used by the Office of Education?

§ 116d.70 Under what conditions does the Commissioner withhold funds?

If the Commissioner determines that an SEA has failed substantially to comply with the requirements of the Act, any regulations that apply, or the provisions of the approved State annual program plan, the Commissioner—

(a) Shall withhold title I migrant education funds from that SEA in accordance with section 186 of title I of the Act and Section 435 of the General Education Provisions Act; or

(b) May enter into a compliance agreement with the SEA in accordance with section 186 of title I of the Act; or

(c) May issue a cease and desist order to the SEA in accordance with Section 454 of the General Education Provisions Act.

(20 U.S.C. 2761, 2762; 20 U.S.C. 2836; 20 U.S.C. 1234b, 1234c)

§§ 116d.71–116d.79 [Reserved]

Note.—This appendix to Part 116d will not be published in Title 45 of the Code of Federal Regulations.

Appendix—Summary of Comments and Responses

The following is a summary of the comments received on the notice of proposed rulemaking (NPRM)—for the Migrant Education Program—published on May 14, 1979. Each comment is followed by a response that indicates any change that has been made or why no change is considered necessary. Specific comments are arranged in order of the sections of these final regulations to which they pertain.

§ *116d.3 What definitions apply to the migrant education program?*

Comment. One commenter requested a clarification of the term "personal subsistence," as used in the definitions of "agricultural activity" and "fishing activity."

Response. No change has been made. However, as explained in the "Summary of Comments and Responses" published with the previous final regulations of November 13, 1978 (at 43 FR 52684), "personal subsistence" means that the agricultural items are produced or fish or shellfish are caught for direct consumption by the worker and his or her family—rather than produced or caught for wages or other income.

Comment. One commenter recommended that the "cultivation and harvesting of trees" be defined

separately from "agricultural activity," as a different occupational activity.

Response. No change has been made. The statute extends program eligibility only to the children of workers involved in either agriculture or fishing. However, Senate Report No. 95–856, 95th Congress, 2d Session at 24, explains that "migratory workers involved in the cutting and harvesting of timber are within the definition of migratory 'agricultural workers.' "

Comment. Two commenters recommended that the processing of trees (that is, the operation of lumber mills) be included as a qualifying occupation under "agricultural activity."

Response. No change has been made. Senate Report No. 95–856, 95th Cong. at 24, indicates that only the "cutting and harvesting of timber" are intended to be included under the definition of "agricultural activity." By including workers who are involved in industrial processing activities, the program would risk serving large numbers of children outside of the group Congress intended to be served.

Comment. Two commenters recommended that the definitions of "currently migratory child," "migratory agricultural worker," and "migratory fisher" be revised to provide that moving from one school attendance area to another qualifies a child or worker as migratory. These commenters pointed out that children and workers may move from place to place within very large school districts.

Response. No change has been made. This recommendation has not been adopted for the reasons given in the preamble to the interim final regulations (at 42 FR 36078) and in the "Summary of Comments and Responses" published with the previous final regulations (at 43 FR 52683). The legislative history of the Migrant Education Program indicates that Congress generally intended the program to serve children who migrate from school district to school district (Conference Report No. 93–1026, 93d Cong., 2d Sess. 142–143). It was the belief of Congress that these children suffer the greatest ill-effects of mobility because different school districts are administered separately and generally provide different curricula.

However, the definitions do continue to cover children and workers who migrate from one school administrative area to another in States that are comprised of a single school district.

Comment. One commenter recommended that a child who moves only during periods of time when school is not in session should not qualify as a "currently migratory child."

Response. No change has been made. The Commissioner has no authority to regulate with respect to the time of the year during which a child migrates.

Comment. Two commenters recommended that the period of eligibility for a "formerly migratory child" should be changed. One commenter recommended reducing the period of eligibility to 2 or 3 years; the other commenter recommended a reduction to one year.

Response. No change has been made. The eligibility of a child as a "formerly migratory child" for up to 5 years is statutory.

Comment. One commenter requested a clarification of the phrase "to enable him or her to obtain temporary or seasonal employment" as used in the definitions of "migratory agricultural worker" and "migratory fisher." More specifically, this commenter asked whether a person would actually have to secure the agricultural or fishing employment in order to qualify as an eligible worker.

Response. No change has been made. The phrase "to enable him or her to obtain temporary or seasonal employment" refers only to the *intent* to obtain employment. As stated in the preamble to the program's interim final regulations (at 42 FR 36078), the Commissioner considers a person to be migratory if that person moves from one school district to another in order to secure seasonal or temporary agricultural or fishing employment, regardless of whether the employment is actually secured.

§ 116d.10 What documents must a State submit to receive a grant?

Comment. One commenter recommended that the State program plan be required only once every three years.

Response. No change has been made. Section 141(a) of title I of the Act states that a State educational agency (SEA) is eligible to receive a grant—annually—"upon application." Therefore, an application document must be submitted for grant awards under this program. Furthermore, section 510 of title V of the Act (State administration requirements for both title I and title IV programs) describes the plan for the Migrant Education Program as "the annual application submitted under Section 142 of this Act."

Comment. One commenter recommended that a State monitoring and enforcement plan be required annually.

Response. No change has been made. Section 171(a) of title I of the Act requires the submission of a State monitoring and enforcement plan at least once every three years. While the statute gives the Commissioner the authority to require the submission of this plan more frequently than once every three years, the Commissioner does not believe that there is a sound programmatic reason for doing so.

The State monitoring and enforcement plan merely describes how the SEA will monitor projects and enforce compliance with legal requirements, and does not include the types of information that need to be reviewed by the Commissioner annually—such as numbers of children, the needs of those children, types of services to be provided, and the cost of those services. All of this information is provided in the annual program plan.

Comment. One commenter recommended that the SEA be required to consult more fully with local educational agencies (LEAs) in the development of the State annual program plan.

Response. No change has been made. Public participation requirements governing the development of the annual program plan are included in the Education Division General Administrative Regulations (EDGAR), and provide for the participation of advisory committees, local agencies, interest groups, and experienced professionals.

Comment. One commenter recommended that an amendment to a State annual program plan should not be required to undergo the same review and approval process as the original plan itself.

Response. No change has been made. The EDGAR govern the amendment of annual program plans. Basically, those rules require an SEA to follow the same procedures in amending its annual program plan as it followed in developing it initially. However, an amendment is required only if the changes are "significant and relevant"—in which case it is appropriate to subject an amendment to full consideration.

§ 116d.14 How is a State's annual program plan reviewed?

Comment. One commenter recommended that the Commissioner use "experts" to review State annual program plans.

Response. No change has been made. It is not the purpose of program regulations to regulate the administrative procedures of the Office of Education. However, the Commissioner is planning to use "experts" in migrant education to review State annual program plans. That

review is described in § 116d.14 of these regulations.

§ 116d.20 How is the amount available for a State grant determined?

Comment. Seven commenters recommended that the Commissioner should not limit, by placing a "cap" on title I State agency program funding, the fiscal growth of the Migrant Education Program. These commenters recommended maintaining the full funding for the program "off-the-top" of the total title I appropriation.

Response. No change has been made. Under section 193 of the title I statute, all title I State agency programs—including the Migrant Education Program—continue to be fully funded "off-the-top" of the total title I appropriation.

Comment. Thirty-two commenters recommended that the funding formula be expanded with respect to the age range of migratory children who are eligible to be counted for funding. Five of these commenters recommended expanding the funding formula to include migratory children aged 18–21 years old; twenty-seven commenters recommended including preschool-aged migratory children in the funding formula.

Response. No change has been made. The funding formula—including the counting of only those migratory children aged 5 through 17 years—is statutory.

Comment. One commenter recommended increasing the amount of title I administrative funds that are provided to an SEA to administer its migrant education program.

Response. No change has been made. The amount of title I administrative funds that an SEA is eligible to receive is statutory (section 194 of title I of the Act).

However, the statute does not specify what portion of the funds authorized under section 194 is to be used for each of the various title I programs. Because the SEA both administers and carries out its program for migratory children, it may also perform a number of administrative type activities, such as those listed in § 116d.50(d)(2), that are performed by LEAs for programs under 45 CFR Part 116a (educationally deprived children) or by other State agencies for programs under 45 CFR Part 116b (handicapped children) and 45 CFR Part 116c (neglected or delinquent children). These activities may be charged to program funds even though they are "administrative" in nature.

Furthermore, the Education Amendments of 1978 did increase the amount of administrative funds to be provided, generally, to each SEA to the greater of $225,000 or 1.5 percent of the State's total of Title I allocations.

Comment. One commenter requested that the funding formula for the Migrant Education Program be explained in detail in the program's regulations.

Response. No change has been made. Section 116d.20 provides a general explanation of how the total grant amount available to an SEA is determined. However, for clarification, a more detailed explanation of how State grant amounts are determined is provided here.

(a) A State is credited with one residency day for each day (during the calendar year period) that a migratory child resides in that State. Residency days for each migratory child are determined on the basis of that child's enrollment data in the migrant student record transfer system (MSRTS).

(b) A State's total of accumulated residency days is divided by 365 (each group or 365 accumulated residency days equals one full-time equivalent (FTE) migratory child).

(c) A State's total FTE of migratory children is then multiplied by 40 percent of the State's per pupil expenditure rate (adjusted to not less than 40 percent of 80 percent nor more than 40 percent of 120 percent of the national average per pupil expenditure rate).

(d) An additional amount (based on a State's enrollment of summer program migratory children and the duration of those summer program enrollments) is then added. That additional amount is added in consideration of "the special needs of . . . children for summer programs and the additional costs of operating such programs during the summer."

The computed amount becomes the total amount available to that State for its title I migrant education grant, unless that State's computed amount results in an amount less than the State received in the prior fiscal year. Section 157 of title I of the Act provides that no State migrant education program shall receive in any fiscal year—through and including fiscal year 1982—less than 100 percent of the amount that it received in the prior fiscal year.

Furthermore, the Commissioner is authorized by section 142(c) of title I of the Act to use all or part of the amount available to an SEA to make a special arrangement with another agency for services to migratory children. Since fiscal year 1969, the Commissioner has withheld a proportionate amount of each State's entitlement to fund the migrant student record transfer system. The remaining amount is then made available to each SEA.

Comment. Ten commenters requested a clarification of the "special summer formula" described in § 116d.20(b). Five of those commenters requested that the regulations include the formula itself.

Response. No change has been made. Section 116d.20(b) provides a general explanation of the objective of the "special summer formula" and the adjustment factor. As new data become available to the Commissioner from year to year, the adjustment factor may be changed based on "the best available information about the costs of operating summer projects." However, as § 116d.20(b) also states, the adjustment factor to be used each year will be announced, in advance, in the **Federal Register.**

Comment. One commenter recommended that the Comissioner establish some additional requirements to be imposed on SEAs that accept the additional funds generated by the special summer formula. One suggestion was that an SEA be required to conduct a summer project of a prescribed duration.

Response. No change has been made. The title I statute and these regulations make it clear that each SEA is charged with the responsibility to determine the special educational needs of the eligible migratory children and to design appropriate projects to meet those needs. It is expected that an SEA will design its summer projects in that same manner. No requirements beyond those generally imposed for other types of projects are warranted.

However, the Commissioner does interpret the statute as authorizing a denial of the additional funds generated by the special summer formula to an SEA that does not conduct a summer project at all.

§ 116d.22 How are excess funds reallocated?

Comment. One commenter recommended that the Commissioner not be authorized to reallocate funds. Two commenters urged that the Commissioner's reallocation authority be maintained.

Response. No change has been made. Section 141(b) of title I of the Act authorizes the Commissioner, in the event it is determined that the amount available to a State exceeds its requirements, to "allocate such excess, to the extent necessary, to other States, whose total of grants under this sentence would otherwise be insufficient for all such children to be served in such States."

Comment. One commenter recommended that the Commissioner not consider reallocating part of a

State's total amount available for its grant unless that State has carried over for two consecutive years more than 25 percent of its entitlement. Another commenter recommended that the figure of 30 percent be used.

Response. No change has been made. The Commissioner believes that a 15 percent carryover of funds for two consecutive years is an appropriate amount to initiate *consideration* of the reallocation of part of these funds—as excess funds.

It is important to note that the repeated occurrence of a 15 percent carryover merely triggers the Commissioner's consideration of the reallocation of funds.

Furthermore, § 116d.22(c) explains that the Commissioner notifies an SEA if a reallocation is being considered, and the SEA is provided with an opportunity "to explain why a reallocation is not warranted." Therefore, if an SEA can demonstrate that it has a genuine need for all of its grant funds and that those funds will be used for current-year program services, the Commissioner may determine that a reallocation is not warranted.

§ 116d.23 Under what conditions may the Commissioner make a special arrangement for services?

Comment. One commenter recommended that the Commissioner should not be authorized to "by-pass" an SEA. Conversely, another commenter recommended that the Commissioner's "by-pass" authority (authority to implement a special arrangement for services) be retained.

Response. No change has been made. The Commissioner's authority to "by-pass" an SEA to provide program services is statutory. Section 142(c) of title I of the Act states that "If the Commissioner determines that a State is unable or unwilling to conduct educational programs for migratory children . . . or that it would result in more efficient and economic administration, or that it would add substantially to the welfare or educational attainment of such children, he may make special arrangements with other public or nonprofit private agencies to carry out the purposes of this section."

Comment. Three commenters requested that parents and agencies be provided with a specific mechanism through which they can petition either the Commissioner or an SEA to implement a special arrangement for services.

Response. No change has been made. The Commissioner does not believe that the creation of district and possibly restrictive petition procedures was warranted. The existing complaint resolution procedures—at both the Federal and State levels—are flexible enough to serve as an effective means through which a request for a special arrangement may be made.

§ 116d.30 What documents must an applicant submit to receive a subgrant?

Comment. One commenter recommended that the Commissioner continue to require the submittal, to the Office of Education, of all approved applications for subgrants.

Response. No change has been made. The Migrant Education Program is both administered and operated by SEAs.

In the event of a subgrant to an LEA or a special arrangement with another agency to conduct program services, the SEA is fully responsible for reviewing and approving the appropriate application for funds. However, the Commissioner is authorized to regulate with respect to the minimum requirements of an application for a subgrant, and has done so in § 116d.32 of these regulations. The Commissioner believes that an application for a subgrant, submitted in accordance with the requirements of subpart D of these regulations (How Does An Agency Apply to the State for a Subgrant?), will provide an SEA with adequate information to determine whether the proposed project complies with applicable regulations and statutes, as well as to evaluate its promise of success in meeting the special educational needs of the children.

Furthermore, the Commissioner is interested in reducing, when reasonable, the paperwork burden imposed on grantees.

The Commissioner is authorized, of course, to oversee the plan and operation of a project conducted by an operating agency. Therefore, § 116d.60 of these regulations requires that "If the Commissioner requests a copy of an approved application, the SEA shall send that copy within 10 days of the request."

§ 116d.32 What provisions are required in an application for a subgrant?

Comment. One commenter recommended that the Commissioner should prescribe more detailed requirements for subgrant applications.

Response. No change has been made. The Commissioner believes that the requirements imposed by § 116d.32 dealing with applications for subgrants are sufficient to permit the SEA to review each application appropriately. As § 116d.32(j) states, the SEA may require "any other relevant information" that it needs to evaluate the application.

§ 116d.40 How is the amount of a subgrant determined?

Comment. One commenter requested a clarification of the "formula" through which an SEA distributes program funds to operating agencies.

Response. No change has been made. There is no "formula" through which an SEA is required to distribute program funds to operating agencies. Section 116d.40 provides a general explanation of the criteria with which an SEA may determine the amount of a subgrant to an LEA. This section provides workable and flexible standards for the SEA.

§ 116d.41 What are the conditions under which a State may make a special arrangement for services?

Comment. Three commenters asked whether an SEA is authorized to provide services through an agency other than an LEA.

Response. No change is required by this comment. Section 116d.41 states clearly that an SEA "may make a special arrangment with a public or nonprofit private agency or agencies to carry out a project."

Comment. Thirteen commenters requested a clarification of the circumstances under which an SEA should consider "by-passing" an LEA and conducting services through a special arrangement with another agency.

Response. A change has been made. Section 116d.41 now includes some further clarification of the circumstances in which an SEA should consider conducting services through a special arrangement with an agency other than an LEA.

This section now indicates that an SEA may determine that an LEA is "unwilling" to conduct a project if the LEA does not submit an application by the date established by the SEA. In addition, the SEA may determine than an LEA is "unable" to conduct a project if it does not submit, after any needed technical assistance from the SEA, an application of sufficient quality to satisfy the SEA's criteria for approval.

Furthermore, § 116d.41 now states that in accordance with its obligation under § 116d.12(d)(2) to serve "all significant concentrations of currently migratory school-aged children in the State," an SEA shall either provide services directly or implement a special arrangement for services when the non-participation of an LEA affects a "significant concentration" of eligible, currently migratory school-aged children.

§ 116d.51 How may funds be used?

Comment. Ten commenters recommended that § 116d.51(b) emphasize instruction in the basic academic subjects, as emphasized in § 116d.39(b) of the previous final regulations. These commenters also suggested that the listing of authorized services in § 116d.51(b) be re-ordered to emphasize academic instruction.

Response. A change has been made. Section 116d.51(b), in referring to appropriate types of project services, now includes the phrase "particularly any need for improvement in the basic academic subjects." Also, the listing of suggested types of services has been re-ordered to give emphasis to basic academic instruction.

Comment. Two commenters recommended that the Commissioner require all State programs to include instruction in several selected, standard disciplines.

Response. No change has been made. The Migrant Education Program is a supplementary, compensatory educational program intended to address "the special educational needs of . . . migratory children particularly any need for improvement in the basic academic subjects." The determination of the special educational needs of the migratory children who will participate is the responsibility of each SEA, as is the design of the programs and projects to meet those needs.

Comment. One commenter recommended that these regulations encourage "non-pullout" services (services provided in the regular classroom).

Response. No change has been made. The title I statute and these regulations make it clear that each SEA is charged with the responsibility to determine the special educational needs of the eligible migratory children and to design appropriate programs and projects to meet those needs.

It is not the intent of these regulations nor of the statute to limit unduly the options of educational agencies with respect to the timing and approaches to be taken in the development of special migrant education instructional activities. The Commissioner supports fully the use of "non-pullout" services, when appropriate.

It should be noted, however, that when special migrant education services are provided in the regular classroom, special precautions must be taken to assure that these services are not diluted by the presence of non-migratory children. Migrant Education Program services must be planned, conducted, and directed for the sole benefit of migratory children selected to participate in the project.

Comment. Two commenters suggested that these regulations should encourage the provision of "summer-term" services.

Response. No change has been made. The title I statute and these regulations make it clear that each SEA is charged with the responsibility to determine the special educational needs of the eligible migratory children and to design appropriate programs and projects to meet those needs. Those needs may require the use of summer-term projects.

However, the Commissioner will encourage indirectly the establishment of summer-term projects through the availability of additional special funds based on the enrollment of eligible migratory children during the summer. Furthermore, the Commissioner interprets the statute as authorizing a denial of the additional funds generated by the "special summer formula"—as explained in § 116d.20(b)—to an SEA that does not provide summer-term services.

Comment. One commenter recommended that the regulations prohibit the payment of "stipends" to participating students.

Response. No change has been made. Section 141(a) of title I of the Act provides that migrant education funds must be used "to establish or improve . . . programs of education for migratory children."

Standing alone, the payment of money to a migratory child has no educational content and does not address directly his or her educational needs. However, if a payment were integrally related to a program of educational services—perhaps as part of a work-study project—such a payment might be permitted. Depending upon the facts of the case, the payment of money might be said to have educational content in its own right.

In addition, any payment would have to be "necessary to enable eligible migratory children to participate effectively in instructional services," as required by § 116d.59(a) of these regulations, and would be subject to the requirement that the expenditure be "necessary and reasonable" according to the standards of appendix C (Principles for determining costs applicable to grants and contracts with State and local governments) that apply to the Migrant Education Program through 45 CFR § 74.171 of the HEW Grants Administration Regulations.

For example, under these standards, migrant education funds could not be used to pay stipends to migratory children merely to encourage them to attend educational programs that they are required to attend under State law.

Comment. A number of commenters recommended that the Commissioner require bilingual and multicultural instructional services when the linguistic circumstances of the children to be served warrant them. More specifically, seven commenters said that bilingual or multicultural instruction should be required; 12 commenters recommended that these regulations require the employment of bilingual or multicultural teachers and other staff members; 10 commenters recommended that these regulations require programs to follow the procedures outlined in the "Task Force Findings Specifying Remedies Available for Eliminating Past Educational Practices Ruled Unlawful Under *Lau* v. *Nichols*," of HEW's Office for Civil Rights.

Response. A change has been made. The provision for a needs assessment—in § 116d.12(b)(3) of these regulations—now includes a requirement that the State annual program plan also "demonstrate that the SEA has obtained an accurate assessment of the cultural and linguistic backgrounds of the children." This requirement is based on the statutory requirement that a State's program be designed to meet the special educational needs of the children.

This language has been continued from the program's previous final regulations. Section 116d.12(b)(3) also requires that the assessment include a description of "the educational needs of the children . . . with respect to . . . speaking ability in English."

Section 116d.12(b)(5)—relating to instructional services—retains the requirement that the State plan include a description of how the SEA ensures that "no migratory child is prevented from benefiting fully from the services provided because he or she does not speak English or has limited English language skills."

Also, § 116d.32(i) retains the requirement that an application for a subgrant include "a description of how the LEA ensures that no eligible migratory child will be prevented from benefiting fully from the project's services because he or she does not speak English or has limited English language skills."

Section 116d.51(b) retains the suggestion that "bilingual and multicultural instruction" is appropriate for support with migrant education funds.

The Act, however, does not authorize, and Section 432 of the General Education Provisions Act forbids, the Office of Education to require any particular type of curriculum, program of

instruction, or staff. Certainly, bilingual or multicultural modes of instruction may be appropriate when the children to be served have particular linguistic needs; however, other curricular responses may also be appropriate.

It is an SEA's responsibility under § 116d.12(b)(3) to assess the linguistic needs of the children to be served and to devise an educational program appropriate to meet those needs.

§ 116d.53 What is the requirement for coordination with other groups?

Comment. Six commenters made general recommendations to strengthen the coordination of a State migrant education program and its local projects with the programs and services of other agencies.

Response. No change has been made. The Commissioner believes that the requirements—for coordination with other agencies—in these regulations are adequate, and that additional regulations such as the prescribing of specific criteria—applicable in all situations—are not warranted.

Section 116d.53 requires an SEA to "plan and operate . . . activities . . . in coordination with . . . migrant and seasonal farmworker projects administered under Section 303 of the Comprehensive Employment and Training Act of 1973 . . . migrant and seasonal farmworker projects administered under title IV of the Economic Opportunity Act of 1964 . . . and . . . projects of any other group or agency that provides benefits or services to migrants." Section 116d.12(b)(11) requires an SEA to describe those coordination efforts in its State plan.

Section 116d.32(h) requires an LEA, in its application for a subgrant, to describe "how the LEA will comply with section 124(f)(1) of title I of the Act concerning coordination with other agencies."

Section 116d.50(d)(1) authorizes the use of title I administrative funds for the "coordination of the State migrant education program—and facilitation of the coordination of local projects—with other public and private agencies." Section 116d.50(d)(2) authorizes the use of Migrant Education Program funds for "coordination of project level activities with other public and private agencies."

Finally, § 116d.59(a)(2)(i) requires an operating agency—before providing any supporting service with migrant education funds—to first "[request] assistance from the SEA in locating and using other Federal and State programs to provide these services."

§ 116d.54 What is the requirement for coordination among projects and with other State programs?

Comment. Sixteen commenters made general recommendations to strengthen the requirements for interstate and intrastate coordination of programs and projects—such as the interdistrict and interstate transfer of course credits and the sharing of program documents.

Response. No change has been made to § 116d.54. However, § 116d.24 of these regulations now discusses in further detail the types and scope of projects that the Commissioner might consider funding under section 143 of title I of the Act. These projects include activities relating to the transfer of school records, parental involvement, resource centers, identification and recruitment of children, secondary school services (including the transfer of course credits), information dissemination, and staff development. These types of projects, which will be conducted through grants or contracts with the Office of Education, should produce significant improvements to the interstate and intrastate coordination of projects.

Also, these regulations retain a number of other provisions that require an SEA to coordinate its State program and local projects with other programs and projects. Section 116d.12(b)(8) requires an SEA to include in its State plan a description of "its efforts for ensuring continuity in the education of migratory children through . . . working cooperatively with other States . . . requiring its operating agencies to cooperate with one another . . . and . . . using fully the migrant student record transfer system."

Section 116d.54 requires each SEA to "develop and implement a plan to promote continuity in the education of eligible migratory children." That section also requires "the SEA . . . [to] . . . include in this plan appropriate procedures for . . . coordinating projects within the State . . . includ[ing] . . . the interdistrict transfer of course credits and the intrastate sharing of project planning, evaluation, curriculum, and staff training materials . . . coordinating the State migrant education program with similar programs in other States . . . and . . . using fully the migrant student record transfer system."

Finally, § 116d.50(d)(2) authorizes the use of migrant education funds for the "interstate and intrastate coordination of the State migrant education program and its local projects."

Comment. Five commenters recommended that these regulations require full use of and participation in the migrant student record transfer system—by all participating SEAs and operating agencies.

Response. No change has been made. Section 116d.12(b)(8) requires an SEA to include in its State program plan a description of its plan for "ensuring continuity in the education of migratory children through . . . using fully the migrant student record transfer system, including the transfer of the most current academic, health, enrollment, and withdrawal information available for the children served."

Section 116d.54 reinforces that requirement through a parallel provision that requires full use of the migrant student record transfer system to be part of the SEA's "plan to promote continuity in the education of eligible migratory children."

Comment. Seven commenters recommended that the types of interstate coordination projects to be considered for funding under section 143 of title I of the Act should be further defined.

Response. A change has been made. Section 116d.24 now includes a much more detailed discussion of the types and scope of projects to be considered for funding under section 143.

Comment. Two commenters recommended that the requirement that the Commissioner consult with the States—with respect to projects funded under section 143 of title I of the Act—be strengthened.

Response. A change has been made. Section 116d.24(e) now states that "the Commissioner consults fully with the SEAs participating in the Migrant Education Program with respect to the types of projects to be conducted, the priority of funding for these projects, the evaluation of existing projects, and the continuation, expansion, or termination of existing projects."

§ 116d.55 What are the requirements for parental involvement?

Comment. Eighty-three commenters spoke of the need to strengthen the requirements relating to parent advisory councils (PACs). Some of the comments were general recommendations; others included recommendations to provide for the election of council members by the parents, to establish interstate parent advisory councils, and to require that program plans and applications be "signed off" by the agency's parent advisory council.

Response. A change has been made. Section 116d.55 now includes some additional requirements for State and local parent advisory councils. These requirements are adopted from section 125(a) of title I of the Act and include the provision of appropriate information,

materials, and training to the councils, and to the extent possible (considering factors such as the duration of the project or the continuing availability of council members), the election of council members by parents of eligible migratory children.

Also, § 116d.24 now indicates that parental involvement activities may be funded under section 143 of title I of the Act. The Commissioner anticipates that a parental involvement special project might include activities such as "designing and establishing interstate (i.e., regional) parent advisory councils . . . conducting research and development activities with respect to effective designs of parental involvement and the training of parent advisory council members . . . and . . . providing technical assistance to SEAs and LEAs in working with and training parent advisory council members."

Also, the requirements (in § 116d.12) for information relative to State and local parent advisory councils has been revised to require a description of how the membership of parent advisory councils will be selected, a statement of the rationale for selecting any method other than elections by parents of eligible migratory children, and a description of the program's strategy for fostering equitable representation of parents of migratory children of different age groups (preschool, elementary, and secondary), and status groups (currently migratory and formerly migratory).

Comment. Nine commenters recommended that these regulations authorize the use of migrant education funds for paying "stipends" to migratory parents. Conversely, two commenters recommended that this type of payment should not be authorized.

Response. No change has been made. The applicable standards for determining the types of parent council expenditures that may be paid from program funds are included in appendix C to the HEW Grants Administration Regulations (45 CFR Part 74). The general standard is that the cost of any service be "necessary and reasonable" to the proper administration of the grant program. The Commissioner recognizes that, in some cases, it may be necessary for an SEA to establish a uniform allowance for parent advisory council members in order to secure the necessary parent participation. This matter must be judged on a case-by-case basis.

The Commissioner expects SEAs and operating agencies to plan parent council meetings according to the scheduling needs of the participating parents and to use stipends only when absolutely necessary.

§ 116d.56 How is the eligibility of a participating child documented?

Comment. One commenter stated that § 116d.56(b) suggests that a child could be enrolled in the program contrary to the parents' wishes.

Response. No change has been made. The language of § 116d.56(b) is not intended to suggest that a child should be enrolled in the program contrary to the wishes of his or her parent or guardian. The intent of that section is to emphasize that an SEA is not required to demand, from the child or his or her parent or guardian, documentary proof of eligibility for the program (for example, proof of prior residence in another school district, proof of previous employment). The determination of eligibility may be made by the SEA solely on the basis of "credible information from any source, including that provided by the child or his or her parent or guardian."

Also, in § 116d.3(d), the definition for "formerly migratory child" explains that program services may be provided to this type of child only with "the concurrence of his or her parent to continue to be considered a migratory child."

When special services are provided to an eligible migratory child, the educational agency alerts the parent on the same basis as it uses when providing special services to any child enrolled in one of its schools. Generally, that standard basis includes notification to the parent of the enrollment into a special program and an explanation of the nature of the special services. In any event, because enrollment into a migrant education project includes enrollment into the migrant student record transfer system, parents are always notified of the enrollment into the program and into the MSRTS—in accordance with the requirements of the Family Educational Rights and Privacy Act.

§ 116d.57 What is the requirement for comparable access for migratory children?

Comment. Thirteen commenters recommended that the proposed § 116d.57(a)(2) be deleted from these regulations. These commenters stated that this subsection suggests that an LEA does not need to provide its own facilities and services to migratory children.

Response. A change has been made. Section 116d.57(a)(2) has been deleted. It is the intent of these regulations to encourage participating agencies to provide all available facilities and services to migratory children on a basis that provides those children with "comparable access" to an appropriate education.

§ 116d.58 Under what conditions may services be provided to preschool and formerly migratory children?

Comment. Many commenters made recommendations regarding the priority of services to the various status groups (currently migratory and formerly migratory) and age groups (school-aged) and preschool-aged) referred to in the title I migrant education statute. Eighteen commenters recommended giving higher priority to services for currently migratory preschool children than to services for all formerly migratory (both school-aged preschool-aged children. Thirty-one commenters recommended that services to all school-aged migratory children (both currently and formerly migratory) be ranked above services to preschool children. Seven commenters said that preschool-aged migratory children are better served by other programs (Migrant Head Start and Title XX, Social Security Act, State Social Services Programs) that are more fundamentally designed to serve this age group of children. Many of these commenters noted that only if preschool children generate funds for a State under the statutory allocation formula would they be in favor of ranking services to currently migratory preschool children above services to formerly migratory school-aged children.

Response. A change has been made. The Commissioner agrees that because preschool children do not generally generate funds under the stautory formula, school-age migratory children should take precedence for services over preschool-aged children.

Accordingly, § 116d.58(c) now orders the program's service priorities as follows:

(a) School-aged currently migratory children.

(b) School-aged formerly migratory children.

(c) Preschool currently migratory children.

(d) Preschool formerly migratory children.

However, if in order to provide title I instructional services to school-aged currently migratory children, it would be necessary to provide day care or similar services to preschool-aged currently migratory children, and no other funds—other than title I funds—are available for that purpose, an SEA or an operating agency may provide title I instructional services instead of day care services to those preschool children as if those

children had a priority higher than school-aged formerly migratory children.

Comment. One commenter requested a clarification of the age group of children considered to be of preschool age.

Response. No change has been made. The Education Division General Administrative Regulations define "preschool" as the "educational level from a child's birth to the time at which elementary education is provided as defined under State law." Each State, of course, is free to establish the age at which free public education commences. Therefore, a child who is under the age at which free public education is provided in that particular State is considered to be of preschool age.

§ 116d.59 Under what conditions may supporting services be provided?

Comment. Four commenters requested that "supporting services" be further defined.

Response. No change has been made. Section 116d.59 states that "supporting services" include services such as health, nutritional, and social services. The Commissioner believes that this definition is sufficiently clear and precise and does not want to limit unduly the types of services that might be considered as supporting services. Section 116d.59 does, however, require that these services be "necessary to enable eligible migratory children to participate effectively in instructional services."

Comment. Three commenters recommended that health services be considered a primary service, and not a supporting service.

Response. No change has been made. The Migrant Education Program is a supplementary, compensatory education program intended to address the special educational needs of the participating migratory children, particularly with respect to the basic academic subjects. Health services are authorized only as a supporting service to those educational services.

Comment. One commenter recommended that supporting services be required as a part of a State migrant education program.

Response. No change has been made. The determination of the special educational needs of the migratory children who will participate in the program is the responsibility of each SEA, as is the design of the programs and projects to meet those needs. If a supporting service is necessary to meet those educational needs, the SEA may be authorized to provide that service.

Comment. Nineteen commenters recommended that the provision of day care services be strengthened. One commenter questioned the authority to provide day care, a supporting service, as part of the Migrant Education Program—an elementary and secondary education program.

Response. No change has been made. The Migrant Education Program is authorized as a program of educational services, and not as a program of various types of family support services. Furthermore, the statute establishes a service priority in favor of school-aged migratory children. In addition, because children from birth through and including four years of age do not generate funds under the statutory formula, school-aged migratory children are considered to take precedence over younger children.

Therefore, day care services are authorized only in special circumstances and only with the explicit approval of the Commissioner. Day care services are not authorized as an alternative to educational services, but only as a supporting service when necessary to enable eligible migratory children to participate in title I instructional services.

§ 116d.64 How must the State resolve complaints?

Comment. Nine commenters recommended maintaining the requirement (in § 116d.26 of the previous final regulations at 43 FR 52681) for a special, expedited complaint resolution procedure for short-term migrant education projects.

Response. A change has been made. The requirement for a special, expedited complaint resolution procedure for the Migrant Education Program has been continued. The Commissioner agrees that the standard complaint resolution procedure required of all title I programs may not be adequate for resolving a complaint that involves a short-term migrant education project.

Comment. One commenter recommended maintaining the provision from the program's previous final regulations (in § 116d.26 at 43 FR 52681) pertaining to the Commissioner's review of an SEA's resolution of a complaint.

Response. A change has been made. The provison for the review, by the Commissioner, of an SEA's resolution of a complaint has been continued from the program's previous final regulations. Furthermore, § 116d.64 now refers to the specific procedures that the Commissioner uses in reviewing an SEA's resolution of a complaint. These procedures were published in the **Federal Register** on October 23, 1979 (at 44 FR 61109).

§ 116d.65 How must the State evaluate the program?

Comment. Several commenters made various recommendations to strengthen and further detail the requirements for the evaluation of the State program.

Response. No change has been made. The Commissioner believes that § 116d.65 provides a sufficiently precise requirement for evaluation of the State program. However, section 183(d) of title I of the Act requires the Commissioner to "provide to State educational agencies, models for evaluations of all programs conducted under [title I] . . . which shall include uniform procedures and criteria to be utilized by . . . the State educational agency in the evaluation of such programs."

That activity is being conducted presently by the Office of Education. When completed, the Commissioner will prepare and publish, as a notice of proposed rulemaking, additional and more detailed evaluation requirements for the Migrant Education Program.

General.

Comment. Ten commenters requested that the appendix to the NPRM (Contents of State Applications) be included in the regulations (§ 116d.12—What provisions are required in a State's annual program plan?).

Response. A change has been made. Substantially the same information that was included in the appendix to the notice of proposed rulemaking—with respect to contents of a State application—is now included in § 116d.12 of these regulations.

Comment. Six commenters recommended that these regulations include the full text of any requirement or definition that has been referenced from a statute or other regulations.

Response. A change has been made. In response to suggestions by the public and other interested parties, these final regulations contain some provisions that were not in the notice of proposed rulemaking. These include certain provisions of the statute governing this program. The purpose of incorporating these provisions into the final regulations is to enable applicants and grantees to understand better the requirements of this program without having to refer to the statute.

Furthermore, as explained in the section of the preamble to these regulations entitled "Policy Manual," the Commissioner is planning to prepare and publish, for the convenience of persons involved with the Migrant Education Program, a consolidation of all regulations and statutes that govern the program.

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Thursday
April 3, 1980

Part VII

Department of Health, Education, and Welfare

Office of Education

State Leadership Programs

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

45 CFR Parts 119 and 120

State Leadership Programs

AGENCY: Office of Education, HEW.

ACTION: Final regulations.

SUMMARY: These final regulations implement Parts A and B of Title V of the Elementary and Secondary Education Act of 1965 (ESEA).

Part A of title V is a program for the consolidated State educational agency (SEA) administration of the ESEA Title I and Title IV programs. All SEAs that administer the title I and title IV programs are eligible for support under this program.

Part B of title V is a program to strengthen State educational leadership and to assist SEAs in identifying and meeting critical educational needs of their States. All SEAs are eligible for support under part B. There is authorization for direct appropriation of funds for this program. However, if there is no direct appropriation, funding will be available from the appropriation for ESEA Title IV Part C.

DATES: Effective Date: These regulations are expected to take effect 45 days after they are transmitted to the Congress. Regulations are usually transmitted to the Congress several days before they are published in the **Federal Register.** The effective date is changed by statute if the Congress disapproves the regulations or takes certain adjournments. If you want to know the effective date of these regulations, call or write the Office of Education contact person.

Date for End of Comment Period on §§ 119.11 and 119.40 through 119.42: June 2, 1980.

ADDRESSES: Send comments to Dr. David G. Phillips, Division of State Educational Assistance Programs, U.S. Office of Education, 400 Maryland Avenue, S.W. (ROB–3, Room 3010) Washington, D.C. 20202. Copies of Title V of ESEA and other statutory materials referred to in these regulations may be obtained by contacting this office.

FOR FURTHER INFORMATION CONTACT: Dr. David G. Phillips, Division of State Educational Assistance Programs, U.S. Office of Education, 400 Maryland Avenue, S.W. (ROB–3, Room 3010), Washington, D.C. 20202. Telephone: (202) 245–1990.

SUPPLEMENTARY INFORMATION:

General Information

The Commissioner published a notice of proposed rulemaking in the **Federal Register** on May 14, 1979 (44 FR 28258). During the period allowed for comments, ten written comments were received. In addition, a number of individuals gave oral testimony and comments on the proposed title V regulations at public hearings held by the ten regional offices of the Department of Health, Education, and Welfare on June 19, 1979. The overall reaction to the proposed regulations has been supportive.

Waiver of Proposed Rulemaking Procedures

Prior to the enactment of the Education Amendments of 1978 (Pub. L. 95–561), there was a maintenance of effort requirement in the program to strengthen SEA management. The requirement was inadvertently omitted in the Education Amendments of 1978. Consequently, the proposed regulations in part 119 were drafted without a provision for maintenance of effort. A technical amendment to the Education Amendments of 1978, enacted August 6, 1979, as Pub. L. 96–46, restores this requirement. It is therefore necessary to implement this requirement with respect to those title V–B State plans that become effective October 1, 1979.

A maintenance of effort requirement exists with respect to ESEA Title IV, Part B (Instructional Materials and School Library Resources) and Part D (Guidance, Counseling, and Testing). Proposed regulations for title IV governing that requirement were published—as §§ 134.13 and 134.91 through 134.93—in the **Federal Register** on May 14, 1979. This was the same day that the proposed regulations for title V were published. Sections 119.11 and 119.40 through 119.42 were adapted from the proposed title IV regulations, and the public comments on the latter regulations have been considered in drafting the title V provisions.

In accordance with section 431(b)(2)(A) (public comment on proposed regulations) of the General Education Provisions Act (GEPA) (20 U.S.C. 1232(b)(2)(A)), it has been the practice of the Office of Education to offer interested parties the opportunity to review and comment on proposed regulations. For the reasons described above, the use of this practice in connection with §§ 119.11 and 119.40 through 119.42 is impracticable under 5 U.S.C. 553(b).

The Commissioner, however, welcomes comment on these sections even though they have been issued as final regulations. Accordingly, any written comments received on or before the 60th day following publication of these regulations in the **Federal Register** will be considered by the Commissioner. If there are substantive comments that merit changes in the regulations, the Commissioner will adopt appropriate amendments to the regulations in Part 119.

Title V, Part B

Background

The program of Federal financial assistance to strengthen the leadership capacity of SEAs began under the authority or the original title V of ESEA in 1965. The "strengthening" program was continued under the Education Amendments of 1974, although it was made a part of the title IV–C program (Educational Innovation and Support). The Education Amendments of 1978 identify a number of new supportable activities and continue the "strengthening" program under Title V–B of ESEA.

Summary of Comments and Responses

The following is a summary of the comments received on the notice for proposed rulemaking for part 119 and the Commissioner's responses to these comments. The comments appear in the order of the sections of the final regulations.

§ 119.1 Strengthening State educational agency management.

Comment. One commenter suggested that the level of funding available to SEAs be guaranteed at the fiscal year 1973 level.

Response. The regulatory language in the proposed § 119.1(b), which was intended to do this, has been deleted because, after the proposed regulations were published, a new section 524 of ESEA was enacted. Section 524 prescribes the title V–B allotment to each State at the 1973 level of funding for that State for "strengthening" activities.

§ 119.10 State plan.

(1) *Comment.* Two commenters suggested that the SEA consult with private school officials in the planning that precedes Statewide conferences at which technical assistance is provided to public and private school officials.

Response. No change has been made. Although this may be a good practice, the Commissioner does not believe that there is statutory authority to require an SEA to consult with either public or private school officials before these meetings. Private school officials are consulted on all occasions where public school officials are consulted.

(2) *Comment.* Two commenters suggested that "private school" be defined.

Response. No change has been made. The terms "private" and "nonprofit" are

defined in the Education Division General Administrative Regulations (EDGAR). To the extent that these definitions do not apply or are inadequate, State law or definitions govern.

(3) *Comment.* One commenter suggested that wherever the words "private school officials" or "officials of private schools" appear, the word "appropriate" be added to insure that the responsible private school official is properly consulted.

Response. A change has been made. The Commissioner notes that the word "appropriate" appears in a similar context in section 406 (Participation of Children Enrolled in Private Schools) of ESEA. The Commissioner agrees to apply that word in the regulations.

(4) *Comment.* One commenter suggested that the requirements in § 119.10(b) duplicate in many ways regulations appearing in §§ 100b.650 through 100b.663 of EDGAR and §§ 134.70 through 134.79 of the ESEA Title IV regulations.

Response. No change has been made. The regulations in § 119.10(b) are intended to govern the provision of services to private school officials while the other regulations are intended to govern the provision of services to private school children.

(5) *Comment.* One commenter suggested that the SEA should not have to send information and materials to private school officials that are not interested in receiving it. Another commenter asked how the State can determine that private school officials "do not desire" to have their children participate.

Response. A change has been made to make the language of this paragraph conform more nearly to that of the statute. An SEA should be able to develop reasonable procedures to determine which private school officials do or do not desire to participate in Federal education programs. The Commissioner, however, does not intend to prescribe restrictive procedures or criteria.

(6) *Comment.* One commenter suggested that an entity ought to "qualify" as a nonprofit private school to be entitled to receive information and technical assistance.

Response. No change has been made. Considering the varied types of relationships between SEAs and private schools, it would be virtually impossible to define qualification so that it would be applicable in every State. One way to identify eligible private schools might be to accept any school whose students meet the requirements of the State's compulsory attendance laws—if any—as being qualified to receive information and technical assistance.

(7) *Comment.* One commenter suggested that the comprehensive plan referred to in sections 404(a)(12) and 522 (2) of ESEA and in § 119.10(c) be submitted with either the title IV State plan or the title V–B State plan.

Response. It is a legal requirement for an SEA to submit a comprehensive plan as a part of both the title IV and the title V–B State plans. The Office of Education, however, has issued instructions to SEAs to submit the comprehensive plan as a part of the title IV State plan with an appropriate cross-reference in the title V–B State plan.

(8) *Comment.* One commenter asked for definitions of "inservice training" and "preservice training."

Response. No change has been made. The Commissioner believes that, taken together, these two terms encompass all training for educational personnel and that any distinction within a State can be treated according to that State's definitions. To make a distinction is not relevant for purposes of the title V program.

(9) *Comment.* One commenter suggested that there be a greater involvement of teachers in the development and implementation of the comprehensive plan for training educational personnel.

Response. No change has been made. The statute requires the involvement of teachers in the development of the plan. and § 119.10(c)(2) indicates that this must be done. The statute does not authorize a regulatory requirement for the involvement of teachers in the implementation of the plan.

(10) *Comment.* One commenter suggested that the regulations should clearly require the involvement of State agencies other than the SEA in the development of the comprehensive plan if those other agencies have legal responsibilities for training educational personnel.

Response. A change has been made by adding a new paragraph (4) to § 19.10(c).

(11) *Comment.* One commenter suggested that provision be made for filing a "plan to develop a comprehensive plan."

Response. Section 119.10(c)(3) was intended to permit this. It has been reworded to make this clearer. It might be noted that a correction has been made in this paragraph so that the comprehensive plan must have been developed and submitted to the Commissioner by June 30, 1980. Thus the plan will be completed prior to the awarding of the title IV and title V–B grants for fiscal year 1981.

(12) *Comment.* One commenter suggested that the regulations not only allow but actively encourage the involvement of all interested and affected parties in each State in the development of the comprehensive plan.

Response. No change has been made. Although this may be very worthwhile, it is not the purpose of regulations to encourage action or involvement, but to specify requirements.

(13) *Comment.* One commenter suggested that specific Federal funds be made available to support the development of the comprehensive plan.

Response. A change has been made to clarify that ESEA Title V funds and ESEA Title IV administrative funds may be used for this purposes.

§ 119.22 Criteria for assistance.

Comment. One Commenter suggested some adjustments in the relative values to be assigned to each criteria. The commenter recommended increased values for quality of key personnel and for dissemination and reduced values for limiting programs to elementary and secondary education and for non-supplanting.

Response. Changes have been made. The Commissioner has increased the weights for quality of key personnel, dissemination, and likelihood for results, and decreased the weights for limiting programs to elementary and secondary education and for non-supplanting.

Other changes in regulations

The reference to an entitlement for the Northern Mariana Islands in § 119.1(b)(4) has been dropped since it is covered in the organic act.

Regulations in 45 CFR Part 74 (the Department of Health, Education, and Welfare general regulations governing the administration of grants) are specifically identified in § 119.3(a) as being applicable to the title V–B program.

The language and provisions in § 119.20 have been modified to conform to the provisions of the new section 524 of ESEA as added by Pub. L. 96–46.

The general selection criteria found in EDGAR (§§ 100a.202 through 100a.206) have been incorporated in § 119.22. A new § 119.33, an adaptation of EDGAR § 100a.590, has been added to avoid a cross reference to that section. The purpose of incorporating the EDGAR provisions into the final regulations is to enable applicants and grantees to understand better the criteria for discrentionary grants under this program without having to refer to EDGAR.

A number of editorial changes have been made for purposes of style and

clarity that do not affect the substance of the regulations.

Title V, Part A

Background

Part A of Title V of ESEA is a new authority that is intended to lessen previously burdensome and duplicative administration of Federal educational programs by the States. It provides for the consolidation, into a single account, of the separate administrative accounts for Title I and Title IV of ESEA. It provides, also, for the submission by the SEA of a single general application containing assurances that the two programs will be administered properly. This is nearly identical to the general application required under section 435 of the General Education Provisions Act (GEPA).

It requires a monitoring program, makes the SEA responsible for evaluation, and requires programs of technical assistance, complaint resolution, audit, and audit resolution. There will be an opportunity for wide public consultation in the development of State plans. This is also called for in section 435 of GEPA.

In addition, each LEA that wishes to participate in the title I and title IV programs shall submit to its SEA a general application containing assurances that the LEA will properly administer the two programs. (More programs are similarly covered by the nearly identical LEA general application under section 436 of GEPA.)

Title V–A authorizes an appropriation to fund the consolidated administration of titles I and IV.

Title V–A is not in effect if there is no specific appropriation for the program. If it is not in effect, each SEA will administer the title I and title IV programs separately with administrative funds coming from each program.

Summary of comments and responses

The following is a summary of the comments received on the notice for proposed rulemaking for part 120 and the Commissioner's responses to these comments. The comments appear in the order of the sections of the final regulations.

Comment. Three commenters suggested that the Commissioner require public hearings on State plans for the programs authorized by titles I and IV. This is authorized by section 502(b)(7)(C) of the Act and by section 435(b)(7)(C) of GEPA.

Response. No change has been made. Regulations to implement section 435 of GEPA are in the Education Division General Administrative Regulations (EDGAR), and the provisions there will govern titles I and IV.

§ 120.11 Publication of and comment on State plan.

(1) *Comment.* One commenter recommended that the regulations require an SEA to consult with major teacher organizations and representatives from higher education in the planning and operation of each program.

Response. No change has been made. This suggestion appears to go beyond the requirements in the statute. Section 501(b)(7) of ESEA and section 435(b)(7) of GEPA require "reasonable opportunities for the participation by local agencies, representatives of the class of individuals affected by each program, and other interested institutions, organizations, and individuals in the planning for and operation of each program [and consultation] with relevant advisory committees, local agencies, interest groups, and experienced professionals in the development of program plans." The statutes do not require the participation of any specific group or individual.

(2) *Comment.* One commenter asked whether the printing of announcements in many newspapers throughout a State would require costly printing serving little purpose and might exceed the law.

Response. No change has been made. The word "announcement" was carefully chosen instead of the word "notice." The word "notice" can have the connotation of a paid legal notice and could require the expenditure of funds by the SEA. On the other hand, the word "announcement" is intended to refer to any sort of published statement, including a press release. The intent is clearly to avoid a requirement of having to pay for publication. The Commissioner also believes that an announcement of the availability of the plan would meet the requirements of the statute and would be less costly than the printing and distribution of a plan document itself "throughout the State."

§ 120.21 Additional administrative funds.

(1) *Comment.* One commenter asked why the migrant education program was the only program mentioned in paragraph (c).

Response. No change is required. Paragraph (c) is intended to implement section 510(c)(1)(2) of ESEA. This particular paragraph of the statute refers only to the migrant education program.

(2) *Comment.* One commenter suggested that in paragraph (c) the word "the" before the words "additional administrative funds" be changed to "any" since the original wording seems to suggest that all of the additional administrative funds would be used for the migrant education program.

Response. The suggested change has been made.

§ 120.30 General application from a local educational agency.

Comment. One commenter suggested that an LEA's general application describe the involvement of teachers, parents, school board, and members of the community. The commenter also recommended that the general application describe the strategies for dissemination.

Response. No change has been made. The general application that an LEA submits to its SEA is a document of assurances. The statute does not require any narrative or descriptions.

§ 120.60 Accounting for administrative funds.

Comment. One commenter suggested that the word "shall" in paragraph (a) be changed to "may" so that the clause would read: "the SEA may treat its allocation from this appropriation as a single account."

Response. No change has been made. A review of the legislative history discloses that the Congress intended that funds appropriated under section 510 of ESEA be treated as a single account and that no discretion be given to the States in this respect.

§ 120.64 State action to withhold funds.

Comment. One commenter suggested that the SEA be able to designate one of its employees to serve as the impartial decision-maker if that employee has no direct interest in the case and no conflict of interest in serving as the decision-maker.

Response. A change has been made to permit an SEA employee who has no involvement in the case to serve as an impartial decision-maker.

Other changes in regulations.

A number of editorial changes have been made for purposes of style and clarity that do not affect the substance of the regulations.

The reader will find a citation of statutory or other legal authority in parentheses on the line following each substantive provision.

(Catalog of Federal Domestic Assistance Programs Number 13.486, Strengthening State Educational Agency Management; not assigned, Administration of Educational Programs)

Dated: February 5, 1980.

William L. Smith,

U.S. Commissioner of Education.

PART 119, Title 45 CFR is revised as follows:

PART 119—STRENGTHENING STATE EDUCATIONAL AGENCY MANAGEMENT

Subpart A—General

Sec.

119.1 Strengthening State educational agency management.
119.2 Eligible parties.
119.3 Regulations that apply to this program.
119.4 Definitions.

Subpart B—How a State Applies for a Grant

119.10 State plan.
119.11 Conditions the State must meet before submitting a plan—maintenance of effort.

Subpart C—How the Commissioner Makes a Grant to a State

119.20 Grants to State educational agencies.
119.21 Evaluation of application for discretionary grant.
119.22 Criteria for assistance.

Subpart D—Conditions That the State Must Meet

119.31 Providing resources for other agencies of State government.
119.32 Carry-over funds.
119.33 Evaluation by the State educational agency.

Subpart E—Compliance Procedures Used by the Office of Education

119.40 Waiver of maintenance of effort.
119.41 Procedures for waiver of maintenance of effort.
119.42 Effect of waiver of maintenance of effort.

Authority: Title V, Part B, Elementary and Secondary Education Act of 1965, as amended. 92 Stat. 2248–2249.

(20 U.S.C. 3161–3164)

Subpart A—General

§ 119.1 Strengthening State educational agency management.

This program provides Federal financial assistance to strengthen the educational leadership resources of State educational agencies (SEAs) and to assist SEAs in indentifying and meeting the critical educational needs of the States.

(20 U.S.C. 3161)

§ 119.2 Eligible parties.

(a) All SEAs are eligible for support under this program.

(b) With the concurrence of all the SEAs involved, one SEA may apply for a grant on behalf of itself and other SEAs.

(20 U.S.C. 3161)

§ 119.3 Regulations that apply to this program.

The following regulations apply to this program:

(a) The general regulations of the Department of Health, Education, and Welfare on Administration of Grants in part 74.

(b) The Education Division General Administrative Regulations (EDGAR) in part 100a (Direct Grant Programs) for projects funded with discretionary grants, or part 100b (State-Administered Programs) for all other grants.

(c) The regulations in this part.

(20 U.S.C 3161–3164)

§ 119.4 Definitions.

(a) As used in this part—

"Act" means the Elementary and Secondary Education Act of 1965, as amended (Pub. L. 89–10).

(20 U.S.C. 821)

"Preceding fiscal year" means the twelve-month fiscal period most commonly used in the State for official reporting purposes prior to the beginning of the Federal fiscal year for which funds are available.

"Second preceding fiscal year" means the second twelve-month fiscal period most commonly used in the State for official reporting purposes prior to the beginning of the Federal fiscal year for which funds are available.

(20 U.S.C. 3084(a)(7))

"Title V–B" means part B of title V of the Act.

(20 U.S.C. 3161–3164)

(b) The following terms used in this part are defined in the Act—

Commissioner.
Local educational agency (LEA).
State.
State educational agency.

(20 U.S.C. 881)

Subpart B—How a State Applies for a Grant

§ 119.10 State plan.

(a) An SEA shall describe in its State plan the activities planned for the purpose of strengthening the SEA under title V–B. This description shall include—

(1) The purposes for which the SEA plans to spend title V–B funds;

(2) The activities or groups of related activities the SEA plans to undertake to achieve these purposes;

(3) The ways in which these activities or groups of related activities will (i) strengthen the educational leadership resources of the SEA, or (ii) assist the SEA in identifying and meeting the critical educational needs of the State; and

(4) The estimated annual cost for each program year covered by the State plan for each activity or group of related activities.

(b) An SEA shall describe in its State plan how it will make available information and technical assistance to appropriate private school officials who desire to arrange for children in those schools to participate in Federal elementary and secondary education programs. The following steps are required:

(1) The SEA shall make available to appropriate private school officials the same publications and materials relating to those programs that the SEA provides to LEAs.

(2) The SEA shall invite appropriate officials of private schools to SEA-sponsored or conducted meetings of groups of LEAs at which those programs are to be discussed.

(3) An LEA that receives individual technical assistance from the SEA in planning projects shall invite appropriate officials of all interested private schools in its district to those technical assistance sessions that deal with those programs.

(4) An SEA shall make available appropriate technical assistance to appropriate officials of private schools upon the request of those officials. The SEA shall invite the LEAs in whose districts those private schools are located to these technical assistance sessions.

(5) An SEA is not required to make information and technical assistance available to officials of private schools that have indicated to the SEA that they do not desire to have their children participate in Federal educational programs.

(c)(1) An SEA shall describe in its State plan a comprehensive plan for the coordination of Federal and State funds for training educational personnel. This comprehensive plan need not have been developed solely for the purpose of complying with the requirements of either section 404(a)(12) (comprehensive plan for training) or section 522(2) (comprehensive plan for training) of the Act. An SEA may use its funds under title V–B or its administrative funds under section 404(a)(8) (administration of the title IV State plan) of the Act to develop its comprehensive plan if the development is an identified activity in the appropriate State plan.

(2) The Commissioner accepts a comprehensive plan that was developed prior to the effective date of the title V–B State plan so long as the comprehensive plan meets the

requirements of section 404(a)(12) or section 522(2) of the Act.

(3) The Commissioner accepts a description of the planning that a State is undertaking to meet the specific requirements of section 404(a)(12) or section 522(2) of the Act if the SEA submits the comprehensive plan in final form as an amendment to the appropriate State plan by June 30, 1980.

(4) The comprehensive plan shall be developed with the involvement of teachers, professional associations, institutions of higher education, and other interested individuals and organizations including other affected public agencies.

(d)(1) The SEA shall submit its title V–B State plan in accordance with the instructions and schedules of the Commissioner.

(2) The SEA need not submit a State plan more often than once every three years.

(e) The SEA may submit amendments to its title V–B State plan so long as they conform to the requirements for amendments in part 100a or part 100b of this chapter, whichever is applicable.

(20 U.S.C. 3162 and 3084(a)(12))

§ 119.11 Conditions the State must meet before submitting a plan—maintenance of effort.

(a) To receive title V–B funds, a State shall have expended for programs described in section 521 (authorized activities for strengthening SEA management) of the Act during the preceding fiscal year an amount of non-Federal funds at least equal to the amount of non-Federal funds it expended for those purposes during the second preceding fiscal year.

(b)(1) If non-Federal expenditures for programs described in section 521 of the Act depend on a State appropriation that is not an annual appropriation, the State may average its expenditures over the number of fiscal years for which the appropriation was made.

(2) A State that chooses to average its expenditures in this way shall continue to use this method for computing maintenance of effort for each fiscal year for which the State appropriation was made.

(3) A State that does not average its expenditures shall attribute all expenditures to the fiscal year in which they were incurred.

(c)(1) The SEA shall collect and maintain data that verify the State's compliance with this section and with section 431A (maintenance of effort determination) of the General Education Provisions Act (GEPA).

(2) The State shall make these data available to the Commissioner on request.

(20 U.S.C. 3084 and 1232–1)

Subpart C—How the Commissioner Makes a Grant to a State

§ 119.20 Grants to State educational agencies.

(a) The Commissioner makes grants to applicant SEAs on the basis of the allotments described in section 404(a)(9) (annual funding for title V–B) or section 524(a) (allotments to States) of the Act.

(b) If funds are available to the Commissioner for discretionary grants under section 524(b) (discretionary grants to States) of the Act, each SEA is entitled to compete for grant awards from those funds.

(c)(1) To apply for a discretionary grant, an SEA shall submit an amendment to its title V–B State plan in accordance with instructions and schedules of the Commissioner.

(2) An SEA, in its State plan amendment, shall take into account the funding criteria in §119.22 of this part.

(20 U.S.C. 3164 and 3084(a)(9))

§ 119.21 Evaluation of application for discretionary grant.

(a) The Commissioner evaluates an application for a discretionary grant on the basis of the criteria in § 119.22.

(b) The Commissioner awards up to one hundred possible points for these criteria.

(c) The maximum possible score for each complete criterion is indicated in parentheses at the end of that criterion. The value assigned to each criterion indicates the relative importance the Commissioner places on that criterion.

(20 U.S.C. 1221e–3(a)(1))

§ 119.22 Criteria for assistance.

The Commissioner reviews each application for information about each of the following criteria:

(a) Information that shows the quality of the plan of operation for the project—

(1) High quality in the design of the project;

(2) An effective plan of management that insures proper and efficient administration of the project;

(3) A clear description of how the objectives of the project relate to the purposes of the program;

(4) The way the applicant plans to use its resources and personnel to achieve each objective; and

(5) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly. (10 points)

(b)(1) Information that shows the quality of the key personnel the applicant plans to use on the project—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(1)(i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(2) To determine the qualifications of a person, the Commissioner considers evidence of past experience and training in fields related to the objectives of the project, as well as other information that the applicant provides. (8 points)

(c) Information that shows that the project has an adequate budget and is cost effective—

(1) The budget for the project is adequate to support the project activities; and

(2) Costs are reasonable in relation to the objectives of the project. (5 points)

(d) Information that shows the quality of the evaluation for the project—methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable. (See also § 119.33 Evaluation by the State educational agency) (8 points)

(e) Information that shows that the applicant plans to devote adequate resources to the project—

(1) The facilities that the applicant plans to use are adequate; and

(2) The equipment and supplies that the applicant plans to use are adequate. (3 points)

(f) Information that shows that the need for each activity or group of related activities is justified on the basis of how—

(1) The proposed activities will strengthen the educational leadership resources of the SEA; or

(2) The proposed activities will assist the SEA in identifying and meeting the critical educational needs of the State as described in section 521 (authorized activities for strengthening SEA management) of the Act. (20 points)

(g) Information that shows that the SEA is likely to achieve results and that these results will strengthen the SEA's management. (10 points)

(h) Information that shows the quality of the plan to disseminate information related to the program. (5 points)

(i) Information that shows that program activities are limited to elementary and secondary education program management. (6 points)

(j) Information that shows that program activities will supplement and not supplant activities supported with other Federal or State program and administrative funds. (10 points)

(k) Information that shows that program activities are included in the list of eligible activities in section 521 of the Act. (15 points)

(20 U.S.C. 3161, 3162)

Subpart D—Conditions That the State Must Meet

§ 119.31 Providing resources for other agencies of State government.

(a) An SEA shall describe, in its State plan, any planned provision of resources to other agencies or branches of State government under the title V–B program.

(b) Other agencies or branches of State government may use resources from the SEA so long as the activities supported by these resources are limited to the conduct of analyses of educational issues within the jurisdiction of the SEA.

(c) Only the SEA may approve the provision of resources to other agencies or branches of State government under this section.

(20 U.S.C. 3161(2))

§ 119.32 Carry-over funds.

(a) Under section 412(b) (availability of appropriations during a succeeding fiscal year) of GEPA, an SEA may carry over title V–B funds from one Year's grant award and obligate them during the next year.

(b)(1) An SEA may carry over funds made available under title IV–C of the Act for the purposes of section 431(a)(3) (strengthening SEAs and LEAs) of the Act as it was in effect September 30, 1978.

(2) The SEA may obligate these carry-over funds under the authority of section 521 (authorized activities for strengthening SEA management) of the Act and the title V–B State plan in effect during the carry-over period.

(20 U.S.C. 1225(b), 1831(a)(3), and 3161)

§ 119.33 Evaluation by the State educational agency.

The SEA receiving a discretionary grant shall evaluate at least annually:

(a) The SEA's progress in achieving the objectives set forth in its approved amendment to its State plan.

(b) The effectiveness of the project in meeting the purposes of the program.

(c) The effect of the project on persons being served by the project, including persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(20 U.S.C. 1221e–3(a)(1))

Subpart E—Compliance Procedures Used by the Office of Education

§ 119.40 Waiver of maintenance of effort.

(a) Because of exceptional and unforeseen circumstances affecting a State, the Commissioner may waive the maintenance of effort requirements of section 404(a)(7) of the Act and of § 119.11 of this part if it is equitable to do so. This waiver is effective for one fiscal year only and may not be repeated.

(b) Examples of exceptional and unforeseen circumstances include—

(1) An unforeseen, substantial reduction of the tax base due to—

(i) A disaster of natural or human origin, or

(ii) A governmental action;

(2) An unforeseen, substantial diversion of available revenue to other purposes outside the control of the SEA due to emergency circumstances such as those resulting from a disaster of natural or human origin;

(3) An unforeseen, substantial decrease in expenditures by a State due to energy shortages or other emergency circumstances; and

(4) A one-time State appropriation to meet an unexpectedly acute educational need.

(c) Examples of circumstances the Commissioner does not consider to be exceptional and unforeseen include—

(1) A deliberate, substantial reduction of available revenue due to an act of the State legislature or the electorate in other than emergency circumstances; and

(2) The failure of an SEA to maintain its fiscal efforts if it had the financial resources available to do this.

(d) In determining whether it is equitable to grant a waiver under paragraph (a) of this section, the Commissioner considers—

(1) The extent to which the circumstances claimed to be exceptional and unforeseen were of the SEA's own making;

(2) The extent to which the SEA attempted to maintain its fiscal effort for programs described in section 521 (authorized activities for strengthening SEA management) of the Act despite those circumstances; and

(3) Any other factors the Commissioner regards as relevant.

(20 U.S.C. 1232–1)

§ 119.41 Procedures for waiver of maintenance of effort.

The first time a State discovers it cannot comply with the assurance in its State plan to maintain effort, it shall—

(a) Promptly notify the Commissioner and request a waiver for the appropriate fiscal year; and

(b) Amend its State plan to reflect the request for a waiver.

(20 U.S.C. 1232–1)

§ 119.42 Effect of waiver of maintenance of effort.

(a) If the Commissioner grants a waiver of maintenance of effort under § 119.40, the Commissioner reduces the total amount a State may receive for that fiscal year by the exact proportion its expenditures for the preceding fiscal year fell short of its expenditures for the second preceding fiscal year.

(b) The Commissioner bases subsequent determinations of whether the State has maintained effort on the expenditures the Act would have required the State to have made had the Commissioner not granted a waiver.

(20 U.S.C. 1232–1)

Part 120 is added to Title 45 CFR as follows:

PART 120—ADMINISTRATION OF EDUCATION PROGRAMS AND DUTIES OF THE STATE EDUCATIONAL AGENCY

Subpart A—General

Sec.
120.1 Administration of education programs and duties of the State educational agency.
120.2 Eligible parties.
120.3 Regulations that apply to this program.
120.4 Definitions.

Subpart B—How a State Applies for a Grant

120.10 General application.
120.11 Publication of and comment on State plan.

Subpart C—How a Grant is Made to a State

120.20 Application for administrative funds.
120.21 Additional administrative funds.

Subpart D—General Application From a Local Educational Agency

120.30 General application from a local educational agency.

Subparts E and F [Reserved]

Subpart G—Administrative Responsibilities of the State

120.60 Accounting for administrative funds.
120.61 Monitoring and enforcement.
120.62 Evaluation.
120.63 Resolution of audit findings and recommendations.
120.64 State action to withhold funds.
120.65 Carry-over funds.

Authority: Title V, Part A, Elementary and Secondary Education Act of 1965, as amended, 92 Stat. 2240–2248 (20 U.S.C. 3141–3150).

Subpart A—General

§ 120.1 Administration of education programs and duties of the State educational agency.

(a) This program provides for the consolidated administration by the State educational agency (SEA) of the title I (financial assistance to meet special educational needs of children) and the title IV (educational improvement, resources, and support) programs.

(b) The Act describes the means of receiving Federal financial support and the regulatory responsibilities and administrative duties of SEAs and local educational agencies (LEAs).

(20 U.S.C. 3141–3150)

§ 120.2 Eligible parties.

All SEAs that administer the title I and title IV programs are eligible for support under this program.

(20 U.S.C. 3141–3150)

§ 120.3 Regulations that apply to this program.

The following regulations apply to this program:

(a) The general regulations of the Department of Health, Education, and Welfare on Administration of Grants in part 74.

(b) The regulations in this part.

(20 U.S.C. 3141–3150)

§ 120.4 Definitions.

(a) As used in the part—

"Act" means the Elementary and Secondary Education Act of 1965, as amended (Pub. L. 89–10).

"Title I" means title I of the Act.

"Title IV" means title IV of the Act.

(b) The following terms used in this part are defined in the Act:

Commissioner.
Local educational agency.
State.
State educational agency.

(20 U.S.C. 3141–3150, 881)

Subpart B—How A State Applies for a Grant

§ 120.10 General application.

(a) An SEA may submit its general application under the authority of either—

(1) Section 501 (single State application) of the Act; or

(2) Section 435 (single State application) of the General Education Provisions Act (GEPA).

(b) If an SEA submits its general application under section 435 of GEPA, that general application must specifically identify titles I and IV as covered programs for the general application to be acceptable by the Commissioner under paragraph (a) of this section.

(c) An SEA shall submit its general application in a form designed or approved by the Commissioner.

(20 U.S.C. 3141, 1232d)

§ 120.11 Publication of and comment on State plan.

(a)(1) An SEA shall publish and circulate throughout the State the title I migrant education annual program plan and the title IV State plan at least 60 days before submitting the plan to the Commissioner or before the effective date of the plan, whichever occurs earlier.

(2) The SEA shall indicate the date of publication on the State plan or annual program plan.

(b) Publication consists of at least paragraphs (b)(1) and (2) or of (3) of this section:

(1) The SEA shall send a copy of the plan to each LEA or each intermediate district or each county superintendent in the State.

(2) The SEA shall arrange for the printing of an announcement, in as many newspapers as will ensure circulation throughout the State, indicating that the plan is available for review in the office of the SEA and in the offices that received copies under paragraph (b)(1) of this section.

(3) The SEA may ask for the Commissioner's approval to use other means that will accomplish effectively the purposes of this section.

(c)(1) In the publication or announcement the SEA shall identify a comment period of at least 30 days, within the 60-day period, for the receipt of comments.

(2) The SEA shall consider all written or oral comments received before the end of the comment period.

(20 U.S.C. 3141(b)(7)(B))

Subpart C—How A Grant Is Made to a State

§ 120.20 Application for administrative funds.

An SEA shall submit its application for administrative funds in accordance with the instructions and schedules of the Commissioner.

(20 U.S.C. 3150)

§ 120.21 Additional administrative funds.

(a) Section 510(c) (payment of additional amounts) of the Act authorizes an additional 25 percent of the 1.75 percent amount authorized for administration of titles I and IV. To qualify, an SEA shall submit a budget for this additional amount at the time it submits its application for administrative funds under § 120.20 of this part.

(b) The SEA shall show in its budget that the additional funds will be spend for monitoring, audit resolution, or similar activities directly and exclusively related to enforcement of the requirements of titles I, IV, and V–A of the Act.

(c) If the State participates in the migrant education program under section 141 (entitlement and amount of grants for programs for migrant children) of the Act, the SEA shall describe in its annual program plan its intended use of any additional administrative funds for the administration of the migrant education program.

(20 U.S.C. 3150 and 2761)

Subpart D—General Application From a Local Educational Agency

§ 120.30 General application from a local educational agency.

An LEA that submits a general application to its SEA to comply with the provisions of section 436 (single LEA application) of GEPA shall also be considered to have met the requirements of section 502 (single LEA application) of the Act if—

(a) The general application under section 436 of GEPA specifically identifies titles I and IV as covered programs; and

(b) The assurance in section 502(b)(7)(C) of the Act—referring to the inclusion of works of art in construction projects—is also included in the general application under section 436 of GEPA, to the extent that this assurance applies to titles I and IV.

(20 U.S.C. 3142 and 1232e)

Subparts E and F [Reserved]

Subpart G—Administrative Responsibilities of the State

§ 120.60 Accounting for administrative funds.

(a) If the Congress appropriates, under section 510(b) (appropriation authorization for title V–A) of the Act, a single fund for the purpose of administering the title I and title IV programs in a State, an SEA shall treat its allocation from this appropriation as a single account.

(b) If the Congress fails to appropriate administrative funds under section 510(b) of the Act, the SEA may not commingle—

(1) Funds under section 194 (State administrative funds for title I) of the Act used to administer the title I program in its State; and

(2) Funds under section 404(a)(8) (State administrative funds for title IV) of the Act used to administer the title IV program in its State.

(c)(1) The SEA shall use its section 194 funds solely for the administration of title I.

(2) The SEA shall use its section 404(a)(8) funds solely for the administration of title IV.

(3) The SEA shall account separately for the funds in (c)(1) and the funds in (c)(2) of this section.

(20 U.S.C. 3150, 2844, and 3084(a)(8))

§ 120.61 Monitoring and enforcement.

(a) An SEA shall follow the rules and procedures found in subart G, Administrative Responsibilities of the SEA and Applicant Agencies, of part 116, Financial Assistance to Local and State Agencies to Meet Special Educational Needs, of this chapter in its monitoring of title I projects and enforcing the requirements of title I.

(b) An SEA shall follow the rules and procedures found in subpart G, Administrative Responsibilities of the State and its Subgrantees, of part 134, Educational Improvement, Resources, and Support, of this chapter in its monitoring of title IV projects and enforcing the requirements of title IV.

(20 U.S.C. 3146)

§ 120.62 Evaluation.

(a) To meet its responsibilities under section 501(b)(4) (evaluation of programs) of the Act to evaluate the effectiveness of the title I and title IV programs, an SEA shall design a program for evaluation of the management and impact of local projects.

(b) the evaluation designs for title I, title I migrant education, and title IV may differ from each other.

(20 U.S.C. 3141(b)(4))

§ 120.63 Resolution of audit findings and recommendations.

If an SEA administers the title I and title IV programs under the authority of title V–A of the Act, the SEA shall apply the following minimum standards for the resolution of audit findings and recommendations:

(a) The SEA shall insure that, no later than 30 days after the completion of an audit, it will send the final audit determination to—

(1) The affected LEA;

(2) The LEA's title I district advisory council if the audited project is a title I project; and

(3) The Commissioner.

(b) After an affected LEA and its district advisory council have received the final audit determination, the SEA shall allow that LEA and its district advisory council 60 days to appeal that determination.

(c) Within 60 days after receiving an appeal, the SEA—or other individual or agency authorized by law to conduct hearings—shall conduct a hearing on that appeal.

(d) Within 60 days following the hearing on the appeal, the SEA—or other authorized individual or agency—shall issue a final decision.

(e) The LEA may appeal the final decision in accordance with section 509(d) (appeal of a final determination) of the Act.

(f) The SEA shall monitor the affected LEA to assure that the LEA carries out all corrective actions recommended in the final audit determination.

(g) The SEA shall assure the recovery of misspent or misapplied funds, either in a single payment or under the terms of a written agreement establishing repayments in specified installments over a period of no more than three years.

(20 U.S.C. 3149)

§ 120.64 State action to withhold funds.

(a)(1) If a State holds a hearing under section 508 of the Act—which deals with the potential withholding of payments under a title I or a title IV subgrant—an impartial decisionmaker shall conduct that hearing.

(2)(i) An impartial decisionmaker is an individual who is not an employee of the SEA or LEA involved in the hearing or a contractor of either agency.

(ii) However, an impartial decisionmaker may be a contractor hired specifically for the purpose of conducting hearings or an SEA employee who has no involvement in the case.

(b)(1) Following the hearing, the impartial decisionmaker shall recommend to the SEA findings of fact and conclusions of law.

(2) The SEA shall accept the impartial decisionmaker's findings of fact if those findings are supported by substantial evidence.

(c) If the definition of an impartial decisionmaker in paragraph (a) of this section is in conflict with State law or State practice, the SEA shall ask the Commissioner to approve an individual or class of individuals to conduct the hearings.

(20 U.S.C. 3148)

§ 120.65 Carry-over funds.

(a) With respect to the carrying over of funds under section 412(b) of GEPA (availability of appropriations during a succeeding fiscal year)—

(1) The Commissioner considers the program of administering title I to be a single program, whether funds are available under section 194 of the Act (State administrative funds for title I) or section 510(b) of the Act (appropriation authorization for title V–A);

(2) The Commissioner considers the program of administering title IV to be a single program, whether funds are available under section 404(a)(8) of the Act (State administrative funds for title IV) or section 510(b) of the Act; and

(b) An SEA may spend carry-over administrative funds under the authority of whatever title of the Act or whatever State plan or application is in effect during the carry-over period.

(20 U.S.C. 1255(b), 2844, 3064(a)(8), and 3150(b))

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Part VIII

Department of Health, Education, and Welfare

Office of Education

Gifted and Talented Children's Education Program

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

45 CFR Parts 160b, 195, 195a, 195b

Gifted and Talented Children's Education Program

AGENCY: Office of Education, HEW.

ACTION: Final rule.

SUMMARY: These regulations govern Federal financial assistance under the Gifted and Talented Children's Education Act of 1978. The program assists State and local education agencies, institutions of higher education, and other public and private non-profit agencies to plan, develop, operate, and improve programs designed to meet the special educational needs of gifted and talented children.

EFFECTIVE DATE: These regulations are expected to take effect 45 days after they are transmitted to Congress. Regulations are usually transmitted to Congress several days before they are published in the Federal Register. The effective date is changed by statute if Congress disapproves the regulations or takes certain adjournments. If you want to know the effective date of these regulations, call or write the Office of Education contact person.

FOR FURTHER INFORMATION CONTACT: Dr. Harold C. Lyon, Jr., Director, Office of Gifted and Talented, U.S. Office of Education, 400 Maryland Avenue, S.W., Washington, D.C. 20202. Telephone (202) 245-2482.

SUPPLEMENTARY INFORMATION: The purposes of the Gifted and Talented Children's Education Program are—(a) To provide assistance to meet the special educational needs of the Nation's gifted and talented children; and

(b) To enable these children to fulfill their potential both as individuals and as resources to the Nation.

The Gifted and Talented Children's Education Program provides financial assistance to State and local educational agencies, institutions of higher education and other public and private agencies and organizations to help plan, develop, operate, demonstrate, and improve programs designed to meet the special educational needs of gifted and talented children.

A similar program was originally authorized under section 404 of Pub. L. 93-380, the Special Projects Act. It has been restructured as part A, title IX of the Elementary and Secondary Education Act (ESEA), by the Education Amendments of 1978 (Pub. L. 95-561).

The reauthorization restructures the previous statute by reserving 25 percent of available funds to the Commissioner for discretionary program. The remaining funds are awarded to State educational agencies (SEAs) for grants to local educational agencies (LEAs).

These regulations contain provisions governing Federal financial assistance for:

(a) A State-administered grant program; and

(b) A discretionary grant program for:

(1) Statewide activities projects;

(2) Educational service projects and model projects; and

(3) Professional development;

The regulations give the Commissioner the authority to select in any given year certain activities for funding from among the list of allowable activities in the discretionary grant program.

These regulations do not contain in detail certain types of requirements. These requirements are covered comprehensively in Education Division's General Administrative Regulations (EDGAR), which replace the General Provisions Regulations for Office of Education Programs. Although these regulations contain most of the information that applicants need to know to apply, the following items applicable to this program will now be among those also covered generally in EDGAR:

(a) For the State-administered program (45 CFR 100b):

How a State applies for a grant; how a grant is made to a State; how to apply to the State for a subgrant; how a subgrant is made to an applicant; certain conditions that must be met by the State and its subgrantees; administrative responsibilities of the State and its subgrantees; and compliance procedures used by the Commissioner of Education.

(b) For the discretionary grant program (45 CFR 100a):

How to apply for a grant;

How grants are made;

Certain conditions that must be met by a grantee;

The administrative responsibilities of a grantee; and

The procedures the Office of Education uses to get compliance.

Part 160b has been deleted and the provision of that part will now appear in the following new CFR parts: 195, 195a, and 195b.

Comments on the Proposed Regulations

The public was given sixty days in which to submit comments regarding the proposed regulation. Approximately 50 letters were received containing approximately 40 separate comments not counting duplicate or similar comments submitted by more than one individual. In addition to the written comments, oral comments were received from approximately 30 participants at public meetings in the 10 Federal regions across the country. All of the substantive comments on the regulation have been carefully reviewed by the Commissioner and are responded to in this preamble. Summaries of the comments are set forth below on a section by section basis, together with responses explaining any changes that have been made in the final regulation, or indicating why no changes are appropriate.

Summary of Comments and Responses

The following comments were submitted to the Office of Education regarding the proposed regulation. After the summary of each comment, a response is set forth indicating changes which have been made in the regulation or the reasons why no change is necessary. The comments are arranged in the order of sections of the final regulations.

Subpart A—General

§ 195.2 What is the State administered gifted and talented children's education program?

Comment. One commenter expressed the need for further clarification of the extent to which in-service training may be carried out by SEAs and LEAs funded under the State-administered program.

Response. A change has been made. The relationship of in-service training projects under the State-administered program has been clarified. In-service traning is an activity that may be conducted by the local educational agencies as a component of their projects funded by the SEAs to meet the educational needs of gifted children. An SEA may use up to ten percent of its grant award under the State administrative program for statewide planning and coordination, administration, technical assistance, and in-service training designed to meet the needs of gifted and talented children.

§ 195.2(b)(1)

Comment. A number of commenters believed that the intent of Pub. L. 95-561, Title IX, Part A, Section 904, the State-Administered Program, is to distribute 75 percent of the appropriation on an equal basis, to all of the State that submit an approvable application. These commenters questioned the authority of the Commissioner to distribute, on a competitive basis, those funds remaining after the $50,000 minimum-grant awards are made.

Response. No change has been made. The legislative intent for the competitive portion of the State-Administered Program is clearly stated in H. Rpt. 95–1753, p. 282—"The Commissioner may vary the size of a States' grant, based upon the merits of its application. All States which file a completed application which fully meet the requirements of statute and which is approved by the Commissioner shall receive a minimum grant of $50,000, subject to ratable reduction based on appropriations."

§ 195.2(b)(3)

Comment. Several commenters suggested that the regulations should state that SEAs "shall" provide technical assistance to LEAs, rather than "may" provide technical assistance to LEAs. Some commenters requested clarification as to which LEAs are entitled to technical assistance from SEAs, as well as what kind of technical assistance will be provided.

Response. A change has been made. The regulations state that SEAs shall provide technical assistance to LEAs which are unable to compete due to smaller size or lack of financial resources in preparing proposals and in planning, developing, and operating programs.

§ 195.5 Who is eligible for funds under the discretionary grant program?

§ 195.5(b) Comment. A few commenters felt that LEAs are placed at a disadvantage by being required to complete with SEAs, institutions of higher education, and other public and private organizations for all discretionary grant projects other than statewide planning grants. These commenters felt that LEAs do not typically possess resources commensurate with those of other eligible parties.

Response. No change has been made. The Act does not authorize the Commissioner to limit grant competition to one group of eligible applicants, with the exception of statewide activity grants. For other discretionary grants activities, all eligible parties may apply.

§ 195.6 Definitions in EDGAR.

Comment. One commenter stated that the proposed regulations do not contain any reference to regional or intermediate educational units.

Response. No change has been made. The section to which the comment refers lists definitions that are contained in EDGAR Part 100c. The definition of Local Educational Agency (LEA) which is included in EDGAR, and is further adopted in these regulations, includes regional or intermediate educational units.

§ 195.7 What definitions apply to this program?

(1) "Disadvantaged children from low-income families." One commenter expressed concern that the definition of disadvantaged children as children in schools designated as being in a Title I, ESEA attendance area would not ensure the true participation of disadvantaged children from low-income families, in that many children in Title I, ESEA attendance areas are not necessarily disadvantaged. The commenter believed that this definition would penalize secondary students since the majority of schools in ESEA Title I attendance areas are elementary.

Response. A change has been made. To avoid placing an undue burden on the SEAs, the Commissioner provides the option of using the low-income criteria in Title I, ESEA or using any equitable alternate low-income definition that the SEA promulgates or employs.

(2) "Gifted and talented child." One commenter recommended that the proposed definition for gifted and talented child be revised to read—"an individual who has been identified at the pre-school, elementary, or secondary school level" rather than "an individual in preschool, elementary, or secondary school." In this way, gifted and talented children who may not presently be enrolled in a program, such as children who are of preschool age or high school dropouts, would be eligible to participate. The commenter also recommended changing the phrase "leadership activities," to "leadership abilities," which more closely reflects the statutory meaning. The commenter, in order to provide a clearer meaning, recommended changing the phrase "specialized education or services to develop these special skills" to "special education services as provided through a differentiated curriculum and/or methodology beyond those being provided in regular school systems to children not requiring special education to develop these skills."

Response. Some changes have been made. The proposed definition for gifted and talented child is revised to read: "an individual who has been identified at the preschool, elementary or secondary school level." In addition, the term "leadership abilities" has been substituted for "leadership activities." The recommendation dealing with specialized or differentiated services has been addressed in the paragraph which follows.

(3) "Differentiated education or services." One commenter recommended adding to this regulation the definition of the term "differentiated education or services" used in the regulations governing the gifted and talented special projects under Pub. L. 93–380.

Response. A change has been made. Because the term "differentiated" is accepted as a term of art for educators of the gifted and talented it has been added to the definition of "specialized education or services." The new term "specialized or differentiated educational services" combines elements of both terms. The new term means "instruction or other services designed to—

"(a) Meet the special educational and related needs of each gifted and talented child.

"(b) Provide curriculum which incorporates appropriate high level cognitive and affective content which exceeds instruction or services regularly provided to the average student and enhances the unique learning abilities of each gifted and talented child."

(4) Adding the term "psychomotor."

Comment. A number of commenters have expressed concern that "psychomotor" is omitted from the definition of gifted and talented.

Response. No change has been made. The definition of a "gifted and talented" child is based upon the definition set forth in the statute. The statutory definition does not include the "psychomotor" category.

(5) "Preschool."

Comment. One commenter has recommended that the proposed definition for "preschool" be replaced by the definition of preschool found in the Definitions section of the General Provisions for the Office of Education Programs. The definition of "preschool" in the NPRM for the Gifted and Talented Children's Program means "any educational level prior to the elementary level at which educational services are required to be provided by an LEA under State law", thus suggesting that preschool constitutes only those educational services that are required to be provided prior to the elementary level by an LEA under State law.

Response. A change has been made. The definition is amended to coincide with the definition in EDGAR (45 CFR 100c.1). "Preschool" is thus redefined to mean "the educational level from a child's birth to the time at which the State provides elementary education."

§ 195.8 What characteristics must a project involving children have?

§ 195.8(a). Comment. Several commenters expressed confusion over whether a project could deny a child participation if the child failed to pass one of the identification methods used by the project. Other commenters were uncertain over the minimum number of methods for identification and assessment a project must use. A few other commenters did not understand how many such methods a student must pass in projects using multiple methods.

Response. No change is necessary. However, to clarify this provision, all projects must use no fewer than two methods of identification or selection. If a child fails to pass only one method but meets the other method(s), that child may not be denied participation in the project. The purpose of this provision is to ensure that students are not "screened out" by not attaining a certain level on only one test (e.g., an I.Q. test). There is no minimum number of identification/assessment methods a student must meet to be eligible to participate in a project.

Comment. On commenter has recommended that Individual Educational Plans (IEPs) be required.

Response. No change has been made. Requiring written IEPs for participating students is not required in the Act and, therefore, is not included in the regulations. The individual needs of gifted and talented children must be met.

§ 195.8(b). Comment. One commenter has recommended that undergraduate professional development be supported.

Response. The professional development activities authorized by the Act focus on training of personnel engaged in the education of gifted and talented children.

Teachers and supervisors engaged in educating gifted and talented children are typically beyond the undergraduate level. As a result preservice undergraduate training is not assisted.

Subpart B—How Does a State Obtain a Grant?

§ 195a.10 What documents must an SEA file with the Commissioner?

§ 195a.10(b). Comment. Many commenters were confused about the State application requirements and asked if a separate, second application for the competitive portion of the State-administered program is required. Commenters believed that a separate second application was burdensome.

Response. A change for clarity has been made. The final regulations more clearly state that only a single application with a designated section for the competitive portion of the State-administered program is required.

§ 195a.11 What must the State application contain?

Comment. Several commenters requested clarification of the requirement that projects include a component for identifying and serving disadvantaged gifted and talented children from low-income families.

Response. No change is made. A component is an element of a gifted and talented LEA project that is specially directed toward the identification of low-income, disadvantaged gifted and talented children and provides services to meet their special educational needs.

§ 195.12 May an applicant apply for a project lasting more than one year?

Comment. Some commenters asked if grants awarded to States under the State-Administered program will be awarded for more than one year.

Response. A change for clarity has been made. The $50,000 minimum-grant award under the State-Administered Program will be awarded each year for a three-year period. Grants to States awarded under the competitive portion of the State-Administered Program will be awarded on a yearly basis and the amount of the annual competitive grant may change each year. For both awards, the budget period will be 12 months.

§ 195a.21 What evaluation criteria does the Commissioner use to review applications for competitive State grants?

Comment. Many commenters have requested clarification of the term "comprehensive approach" which is a criterion in evaluating the competitive portion of an application under the State-administered program.

Response. A change has been made. "Comprehensive approach" refers to the SEA's criteria for identifying and meeting the special educational and related needs of gifted and talented children as set out in the State application for distributing funds to LEAs. The State application describes the method.

Comment. A few commenters requested that the points awarded for technical assistance be reduced.

Response. No change has been made. The Commissioner considers technical assistance an important SEA responsibility. The technical assistance provided by the SEA partially reflects a State's commitment to improve the quality of gifted and talented education in the State. In addition, SEAs must provide technical assistance to LEAs which are unable to compete due to smaller size or lack of financial resources. This criterion will continue to be worth 20 points.

Comment. Some commenters thought that the coordination criterion was so important that the number of points assigned to it should be increased.

Response. No change has been made. The Commissioner believes that coordination is an important criterion and is properly weighted.

§ 195a.31 May the SEA award a subgrant to an LEA for more than one year?

Comment. One commenter asked the reason for the requirement placing a limit on the duration of subgrants, when there is no such authority in the statute.

Response. No change has been made. Section 907(c) of the Act requires that no financial assistance may be made to an LEA for a period in excess of five years.

Subpart F—What Conditions Must Be Met by the State and Its Subgrantees?

§ 195a.40 Are there restrictions on the types of costs a grant may support?

Comment. One commenter objected to the language in subsection (b) suggesting that an LEA must obtain direct written authorization from the Commissioner and the SEA to use funds for such purposes as professional travel or conference attendance.

Response. A change has been made. This subsection has been deleted. Funds to be used for such purposes must be itemized in the approved project budget.

§ 195a.41 Must a State and local educational agency provide an opportunity for private school students to participate?

Comment. Commenters have requested that greater restrictions be placed on private school participation.

Response. No change has been made. The regulations are in accord with the provision governing private school participation, Section 406, of the Elementary and Secondary Education Act, which requires that LEAs provide for the equitable participation of gifted and talented students enrolled in private nonprofit elementary and secondary schools in the areas served by the project.

Discretionary Program

Subpart B—What kinds of Projects Does the Office of Education Assist?

§ 195b.10 Does the Commissioner establish priorities?

Comment. Some commenters have recommended that this subpart and

section be rewritten to reflect all of the activities authorized in the law, including model projects, research activities, and the establishment of a clearinghouse.

Response. Changes have been made. Subpart B has been amended to reflect some of these comments. Statewide activities projects may include inservice training, statewide planning, and operating projects to serve gifted and talented children. The category of professional development activity has been enlarged to include activities listed separately in the proposed rules as "professional development, inservice training, and leadership training." Research and clearinghouse activities will be funded by contract based on a request for proposal published in the Commerce Business Daily. These activities are not covered under these regulations.

Comment. A few commenters stated that the rules do not make clear which program options the Commissioner will designate as programmatic priorities. Some of these commenters suggested that an advisory council be formed to assist the Commissioner in making such decisions.

Response. No change has been made. In keeping with HEW practice the rules indicate that the Commissioner will announce the specific activities for which funding is available by publishing a notice in the **Federal Register.** Interested parties may contact the Office of Gifted and Talented and have their names placed on the official mailing list so that these announcements will be sent to them at the appropriate time.

In addition, there is an administrative policy which limits the creation of new advisory councils. The Office of Gifted and Talented provides opportunities for recommendations and general comments on programmatic options, funding, and activities through direct communication with professional organizations and consumers.

§ 195b.11 On what types of activities may a statewide planning project focus?

Comment. One commenter has recommended that, to conform with legislative intent, this section should be limited to participation by States that have, in the past, assumed only a limited effort in the education of gifted and talented children. These are States that may have difficulty in participating under the basic grant program without additional assistance. The same commenter suggested that § 195.11 (b), (c), and (d) be deleted. This commenter suggested that the following provisions be added to § 195.11:

(a) The development of a comprehensive, statewide approach to meet the needs of gifted and talented students;

(b) The provision by a State educational agency of developmental and technical assistance (through regional area service centers or other mechanism) to assist specific local educational agencies in carrying out programs or projects to meet the special educational needs of the gifted and talented;

(c) Surveys and assessments to meet those special education needs which currently exist in local educational agencies in the State;

(d) Determination of the need for particular programs and projects to meet those needs as a result of the surveys and assessments;

(e) Development of a comprehensive plan for serving the gifted and talented in local educational agencies in the State;

(f) Provision for State Coordinator(s) or other official(s) with responsibility for development, improvement, coordination and delivery of other State services with respect to programs for the gifted and talented in local educational agencies; and

(g) The development and implementation of an in-service training program for the purpose of start-up activities for local educational personnel in the administration of appropriate and comprehensive methods for the identification and education of gifted and talented children.

Response. There is no statutory mandate to limit consideration to States that have in the past assumed only a limited effort. However, since this is a discretionary program, the Commissioner may establish such program emphasis as deemed appropriate from year to year.

Section 195b.11 has been amended to include provisions for the following activities:

(1) surveys and assessments to meet those special education needs which currently exist in local educational agencies in the State;

(2) determination of the need for particular programs and projects to meet those needs as a result of the surveys and assessments;

(3) provisions for a State coordinator(s) or other official(s) with responsibility for development, improvement, coordination, and delivery of other State services with respect to programs for the gifted and talented in local educational agencies; and

(4) the development and implementation of an in-service training program for the purpose of start-up activities for local educational personnel in the administration of appropriate and comprehensive methods for the identification and education of gifted and talented children.

The provision of technical assistance and developmental assistance by State educational agencies is already included in § 195b.11(d). The development of a comprehensive plan for serving the gifted and talented in local educational agencies is addressed under § 195b.11(a).

§ 195b.12 On what types of activities may an educational service or model project focus?

§ 195.12(b)(5). Comment. A few commenters stated that outside school personnel and organizations should not displace school personnel and should be used only when qualified school personnel are not available.

Response. No change has been made. The involvement of persons and organizations outside the school is meant to complement and supplement the activities of school personnel. Such involvement should allow for the services of community resources to be used to meet the educational needs of gifted and talented children.

Comment. One commenter recommended that the phrase "educational service projects" be replaced with "model projects." Additionally, the commenter recommended that subsection (a) be rewritten to read: "Model projects" shall involve a program of activities which—

(1) Provide for innovative, demonstrative, or model approaches to educating gifted and talented students; and

(2) Are targeted toward special populations of the gifted and talented (such as bilingual, early childhood, handicapped, educationally disadvantaged, migratory, rural, native American or culturally different).

Response. Changes have been made. Model project activities are more clearly identified as a part of the category of activities under education service or model projects. The section for educational service and model projects is amended to include the following provisions: Model projects may involve a program of activities which—

(1) provide innovative, demonstrative, or model approaches to educating gifted and talented students;

(2) are targeted toward special populations of the gifted and talented (such as bilingual, early childhood, handicapped, educationally disadvantaged, migratory, rural, native American or culturally different); or

(3) focus on a particular type of educational service.

§ 195b.13 On what types of activities may a professional development project focus?

Comment. A few commenters stated that private agencies should not be used to provide internships or work experiences.

Response. No change has been made. There is no statutory restriction on the use of private agencies for the provision of internships or work experiences.

§ 195b.13 (§ 195b.54) On what types of activities may an in-service or national leadership training project focus?

Note.—This section has been merged with § 195b.13—Professional Development.

Comment. Some commenters were confused about the difference between professional development and in-service training. One commenter recommended that this section address national leadership training as a separate entity. The commenter recommends the inclusion of internship activities in local, State or Federal agencies or institutions of higher education as an activity under this section. Additionally, the commenter recommends that these projects be focused on providing unique opportunities for training based upon intensive learning opportunities aimed at developing a cadre of future leaders in the education of the gifted and talented, rather than introductory workshops or conferences for a variety of educational and/or non-educational groups.

Response. A change has been made. In-service training and leadership training are two kinds of professional development activities. Other such activities are graduate level instruction leading to a degree in the education of the gifted and talented, short-term courses and instruction, seminars and other high-level opportunities, internships, and work-training experiences.

The final regulations combine all of these activities under the category of "professional development" to reflect the common relationship among the activities.

§ 195b.30 (§ 195.71) How does the Commissioner evaluate an application?

Note.—This section was formerly titled *What criteria are used to evaluate applications for other discretionary projects?*

Comment. One commenter has questioned the need for two scales to evaluate applications for grants other than Statewide planning projects under the discretionary program.

Response. No change has been made. State-wide activities projects have a different focus from other discretionary activities. As a result, the Commissioner believes that different criteria are appropriate.

§ 195b.50 Are there restrictions on the types of costs a grantee may support?

Comment. A number of commenters stated that the restriction on the use of funds for stipends, substitutes, release time, transportation, or meals for participants in in-service training activities would prove to be a disincentive for LEAs and SEAs to sponsor in-service training programs and for teachers to participate in such programs.

Response. A change has been made. Based on previous experience with funded projects, the Commissioner does not generally allow the use of grant funds to cover certain costs related to in-service training conducted under a program with an appropriation of less than $10 million. This experience has shown that those in-service training activities for which participants are directly reimbursed use a disproportionate share of the funds of such Federal programs. However, there are costs which are necessary in order to free the participants to take part in in-service training activities and, as such, are reasonable costs to be supported with grant funds. Examples of such reasonable costs are substitutes and release time. The final regulations eliminate the restrictions on substitutes and release time.

Section 908 of the Act: Federal Share

Comment. A number of commenters requested clarification of the 10 percent matching funds.

Response. The 10 percent non-federal match may be in cash or in kind fairly evaluated and must be contributed by all grantees with respect to all projects governed by these regulations except projects involving the participation of students in non-profit private elementary or secondary schools.

Citation of legal authority

The reader will find a citation of statutory or other legal authority in parentheses on the line following each substantive provision.

Dated: March 13, 1980.

(Catalog of Federal Domestic Assistance Number 13.562, Gifted and Talented Children's Education Program)

William L. Smith,

Commissioner of Education.

45 CFR is amended by deleting Part 160b and by adding the following Parts:

1. A new Part 195 is added as follows.

PART 195—GIFTED AND TALENTED CHILDREN'S EDUCATION PROGRAM: GENERAL

Subpart A-General

Sec.

195.1 What is the Gifted and Talented Children's Education Program?
195.2 What is the State-administered Program?
195.3 Who is eligible for funds under the State-administered program?
195.4 What is the discretionary grant program?
195.5 Who is eligible for funds under the discretionary grant program?
195.6 What regulations apply to the Gifted and Talented Children's Education Program?
195.7 What definitions apply to this program?
195.8 What characteristics must a project involving children have?
195.9 Must a State or local educational agency provide an opportunity for private school students to participate?

Authority: These regulations are issued under the authority contained in Part A of Title IX of the Elementary and Secondary Education Act as amended by Pub. L. 95-561, 92 Stat. 229

(20 U.S.C. 3311-3318)

Subpart A—General

§ 195.1 What is the Gifted and Talented Children's Education Program?

(a) The Gifted and Talented Children's Education Program provides financial assistance through—

(1) A State-administered program; and

(2) Discretionary grants and contracts awarded by the Commissioner of Education.

(b) The program is designed to—

(1) Meet the special educational needs of the Nation's gifted and talented children; and

(2) Enable these children to fulfill their potential both as individuals and as a resource to the Nation.

(20 U.S.C. 3311-3318)

§ 195.2 What is the State-administered program?

(a) The Commissioner provides financial assistance to State educational agencies (SEAs) to plan, develop, operate, and improve programs to meet the needs of gifted and talented children at the preschool, elementary, and secondary levels.

(20 U.S.C. 3314)

(b) SEAs shall use at least 90 percent of the funds awarded under the State-administered program to make competitive awards to local educational agencies (LEAs) for projects that meet the educational needs of gifted and

talented children. Such projects may include components for in-service training.

(20 U.S.C. 3314(c)(2)(B))

(c) From the remaining 10 percent the SEAs—

(1) Shall provide technical assistance to LEAs—which are unable to compete due to smaller size or lack of financial resources—in preparing proposals and in planning, developing, and operating programs under this section; or

(2) May provide Statewide planning and coordination, administration, or in-service training designed to meet the special educational needs of gifted and talented children.

(20 U.S.C. 3314(c)(2)(A))

§ 195.3 Who is eligible for funds under the State-administered program?

The following are eligible:

(a)(i) SEAs if the appropriation in any year is under $15,000,000.

(ii) For purposes of this subparagraph SEAs include the 50 States, the District of Columbia, Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands.

(20 U.S.C. 3314)

(b) If the appropriation in any year exceeds $15,000,000, SEAs, (defined as the several States, the District of Columbia and the Commonweath of Puerto Rico), and schools for Indian Children operated by the Department of the Interior, dependent schools of the Department of Defense, Guam, American Samoa, the Virgin Islands, the Trust Territories of the Pacific Islands, and the Northern Mariana Islands.

(20 U.S.C. 3316)

§ 195.4 What is the discretionary grant program?

The discretionary grant program assists in establishing and maintaining projects to plan, develop, operate, demonstrate and improve programs to meet the special educational needs of gifted and talented children, including the training of personnel engaged in the education of gifted and talented children or supervision of such personnel.

(20 U.S.C. 3315(a))

§ 195.5 Who is eligible for funds under the discretionary grant program?

Under the discretionary program, the Commissioner makes grant awards—

(a) For statewide activities grants to SEAs, and

(b) For all other types of projects, the Commissioner makes grant awards to—

(1) SEAs;

(2) LEAs;

(3) Institutions of higher education;

(4) Other public and private organizations; or

(5) Combinations of the above.

(c) The Commissioner may also enter into contracts with public or private agencies or organizations to operate model projects, disseminate information, or conduct research. Contracts are not covered by these regulations.

(20 U.S.C. 3315(a)(1), (2), (3), (4), (b))

§ 195.6 What regulations apply to the Gifted and Talented Children's Education Program?

(a) *Regulations.* The following regulations apply to the Gifted and Talented Children's Education Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs), 45 CFR Part 100B (State-Administered Programs), and 45 CFR Part 100c (Definitions).

(2) The regulations in this part.

(b) *Definitions in EDGAR.* The following terms used in this part are defined in Part 100c:

Applicant
Application
Award
Budget
Commissioner
Local educational agency (LEA)
Nonprofit
Private
Preschool
Project
Public
State educational agency (SEA)

(20 U.S.C. 1232(a))

§ 195.7 What definitions apply to this program?

As used in these regulations—

"Act" means the Gifted and Talented Children's Education Act of 1978, Title IX–A of the Elementary and Secondary Education Act (ESEA) of 1965 as amended by Pub. L. 95–561.

(20 U.S.C. 3311–3318).

"Child"—including the term "youth"—means any individual from birth through 18 years of age.

"Differentiated or specialized educational services" means instruction or other services designed to—

(a) Meet the special educational and related needs of each gifted and talented child; and

(b) Provide curriculum which incorporates appropriate cognitive and affective content which exceeds the instruction or services regularly provided to the average student and enhances the unique learning abilities of each gifted and talented child.

"Disadvantaged children from low-income families," for purposes of meeting the requirement, shall be children defined by the SEA using either of the following:

(1) The low-income criteria in Title I of ESEA, or

(2) Any other equitable alternate low-income definition that the SEA promulgates or commonly uses on a statewide basis.

"Gifted and talented child" means a child, who has been identified at preschool, elementary, or secondary level and who—

(a) Demonstrates actual or potential high performance capability in areas such as in intellectual, creative, specific academic, or leadership ability or in the performing or visual arts; and

(b) Requires specialized education or services not ordinarily provided by the school;

(20 U.S.C. 3312)

"Indian tribe" means any Federal or State recognized tribe, band, nation, rancheria, pueblo, Alaskan native village—or regional or village corporation as established by the Alaska Native Claims Settlement Act—that exercises the power of self-government.

(20 U.S.C. 3317(b); 45 CFR 187.2)

"Local educational agency" for purposes of this part includes an Indian tribe that operates schools for its children;

(20 U.S.C. 3317(b))

"State," for purposes of the award of funds under section 904 of the Act, means each of the 50 States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(20 U.S.C. 3381(j))

§ 195.8 What characteristics must a project involving children have?

(a) Any project that involves the participation of gifted and talented children must use comprehensive and multiple methods for identifying and assessing the needs of those children. No child shall be denied participation in a projection on the basis of only one method of identification. Methods of identification are—

(1) *Comprehensive,* if they are sufficiently broad to assess children who—

(A) May come within the service category addressed by the project, including those who are economically disadvantaged, handicapped, or culturally different; and

(B) Are in the geographic area to be served by the project; and

(2) *Multiple,* if they involve not fewer than two methods of identification, such

as teacher nomination, measures of creativity, peer nomination, intelligence tests, evaluations adapted to the child's cultural norm, or other innovative strategies for identification. For all identification instruments or strategies, the applicant shall demonstrate a logical connection between those instruments or strategies and the purposes of the project.

(b) *Instructional component.* Any project that involves an instructional component shall provide differentiated or specialized educational services.

§ 195.9 Must a State or local educational agency provide an opportunity for private school students to participate?

If an SEA or LEA receives a grant under this program, the Act requires that agency to provide for participation by students and teachers enrolled in private elementary and secondary schools. EDGAR establishes the rules for this participation (See EDGAR, § 100a.650 et seq.).

(20 U.S.C. 3314(c)(5)(B)), 3315(b)(2), 3086)

2. A new Part 195a is added as follows.

PART 195A—GIFTED AND TALENTED CHILDREN'S EDUCATION: STATE-ADMINISTERED PROGRAM

Subpart A—General

Sec.

195a.1 What general requirements apply to this program?

Subpart B—How Does a State Obtain a Grant?

195a.10 What documents must an SEA file with the Commissioner?
195a.11 What must the State application contain?

Subpart C—How is a Grant Made to a State?

195a.20 How is the amount of a State's grant determined?
195a.21 What evaluation criteria does the Commissioner use to review applications for annual competitive State grants?

Subpart D—How Is a Subgrant Made to an LEA?

195a.30 How does an LEA apply to an SEA for a grant?
195a.31 May the SEA award a multi-year subgrant to an LEA?

Subpart E—[Reserved]

Subpart F—What Conditions Must Be Met by the State and Its Subgrantees?

195a.40 Are there restrictions on the types of costs a grant may support?
195a.41 Allowable costs.

Authority: These regulations are issued under the authority contained in Part A of Title IX of the Elementary and Secondary Education Act as amended by Pub. L. 95–561, 92 Stat. 2292

(20 U.S.C. 3311–3318)

Subpart A—General

§ 195a.1 What general provisions apply to this program?

The provisions of Subpart A of Part 195 (§ 195.1 through § 195.9) apply to the State-administered programs under this part.

Subpart B—How Does a State Obtain a Grant?

§ 195a.10 What documents must an SEA file with the Commissioner?

(a) To receive a minimum allotment an eligible applicant shall submit an application and file it with the Commissioner.

(1) At the minimum the application shall contain the assurances required by—

(i) The provisions governing single State applications contained in EDGAR except that § 100b.101(e)(7)(ii) pertaining to Statewide circulation of the plan and § 100b.105 pertaining to governor's review do not apply to applications for fiscal year 1980 funds; and

(ii) By this Act and these regulations.

(20 U.S.C. 1232d(b) and 3314(b)(1) and (c))

(2) A State must revise and resubmit its application for a minimum allotment every three years.

(b) To apply for a competitive award a State shall submit on an annual basis additional information—in a clearly designated section of its application—that responds to the criteria in § 195a.21 and the application to a notice published in the **Federal Register.**

(20 U.S.C. 3314(b)(1); H. Rept. No. 95–1753 at page 282)

§ 195a.11 What must the State application contain?

(a) A State application shall contain a plan for making subgrants on a competitive basis to LEAs to meet the educational needs of gifted and talented children.

(b) This plan shall set forth separately—

(1) Criteria for awarding not less than 50 percent of the funds available to the State to LEAs for projects that include a component for identifying and serving the special educational needs of gifted and talented children from low income families; and

(20 U.S.C. 3314(c)(3))

(2) Criteria for awarding at least 90 percent of the funds available under this program to LEA projects that are directed toward serving the special educational needs of gifted and talented children. The remaining funds—up to 10 percent—may be used by the State for such purposes as administration, technical assistance, coordination, statewide planning, and in-service training.

(20 U.S.C. 3314(c)(2))

Subpart C—How Is a Grant Made to a State?

§ 195a.20 How is the amount of a State's grant determined?

There are two ways the Commissioner determines a State's grant:

(a) If the appropriation for the Act is less than $15 million, the Commissioner awards—

(1) A $50,000 allotment to each eligible applicant submitting an approved general application subject to a ratable reduction based on the appropriations; and

(2) Additional amounts on a competitive basis, if the amount appropriated is greater than the total required to pay the $50,000 allotment to each applicant State.

(20 U.S.C. 3314(b)(1); H. Rept. 95–1753, (page 282))

(b) If the appropriation for the Act exceeds $15 million, the Commissioner allots funds to each eligible applicant submitting an approved general application according to proportion of the number of children aged 5 to 17 in the State compared to the total number in the 50 States, Puerto Rico, and the District of Columbia.

(1) Not more than one percent of the State administered program funds shall be awarded to Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, elementary and secondary schools operated for Indian children by the Department of the Interior, and dependent schools of the Department of Defense.

(2) The Commissioner may reallot funds among States at times established through publication of a notice in the **Federal Register,** whenever a State does not fully use its allotment.

(3) The Commissioner considers realloting funds from States that carry over more than 15 percent of a prior year's allotment.

(20 U.S.C. 3314(b)(2); 3316)

§ 195a.21 What evaluation criteria does the Commissioner use to review applications for annual competitive State grants?

The Commissioner reviews an application for competitive funds on the basis of the criteria in this section totalling 100 possible points. The maximum possible score appears next to

the heading of each criterion and indicates the relative importance assigned to that criterion by the Commissioner.

(a) *Comprehensive approach.* (25 points) The extent to which an SEA proposes comprehensive methods of identifying and meeting the special educational and related needs of gifted and talented chidren throughout the State under the competitive LEA grant process.

(b) *Planning.* (15 points) The extent to which an SEA ensures the involvement of persons and organizations in both the public and private sectors in the development of procedures for awarding funds to LEAs.

(c) *Technical assistance.* (20 points) The quality and type of technical assistance that the SEA proposes to provide to LEAs which are unable to compete due to smaller size or lack of financial resources in planning, developing, and operating LEA projects.

(d) *Administration.* (15 points) The quality of the State's proposed plan and procedures for awarding subgrants to LEAs for projects to identify and meet the special educational needs of gifted and talented children.

(e) *Disadvantaged.* (10 points) The quality of the SEA's plan to ensure that 50 percent of its funds will be awarded on a competitive basis to LEAs that have projects which contain a component to identify and serve the educational needs of disadvantaged gifted and talented children from low-income families.

(f) *Coordination.* (15 points) The quality of the State's plan to coordinate and monitor LEA activities or projects for gifted and talented children and to disseminate the results of these activities or projects.

(20 U.S.C. 3314 (b)(1), (c))

Subpart D—How Is a Subgrant Made to an LEA?

§ 195a.30 How does an LEA apply to an SEA for a grant?

An LEA submits an application to an SEA according to the procedures and requirements set out in the approved State application.

(20 U.S.C. 3314(c)(2)(B))

§ 195a.31 May the SEA award a multi-year subgrant to an LEA?

(a) A State may not award a subgrant to an LEA for more than five years to achieve the purposes of an LEA's project.

(b) If an LEAs initial application proposes a project requiring more than one year for completion, the LEA shall provide the State with budget projections for each year after the initial year.

(c) For approved multi-year projects, the LEA shall file continuation applications with the State for funding each year after the first year.

(20 U.S.C. 3317(c))

Subpart E—[Reserved]

Subpart F—What Conditions Must Be Met by the State and Its Subgrantees?

§ 195a.40 Are there restrictions on the types of costs a grant may support?

Funds may not be used for—

(a) Construction, repair, remodeling, or alteration of facilities or sites;

(b) Stipends, transportation, or meals for participants in in-service training activities.

(20 U.S.C. 1221e-3(a)(1))

§ 195a.41 Allowable costs.

The following costs are allowed:

(a) If a project involves an internship, the payment to each participant of an allowance that is not in excess of the entering salary for professionals in the agency or institution in which the participant is placed.

(b) If the project involves a graduate fellowship, the payment of a stipend, tuition, and fees.

(c)(i) If the project involves in-service or national leadership training, the payment of tuition and fees for university or college courses in education of the gifted and talented; and

(ii) If the project involves in-service training, the payment of reasonable costs for substitutes and for release time.

(20 U.S.C. 3315 (a)(1), (a)(2))

3. A new Part 195b is added as follows:

PART 195B—GIFTED AND TALENTED CHILDREN'S EDUCATION PROGRAM: DISCRETIONARY GRANT PROGRAM

Subpart A—General

Sec.

195b.1 What general requirements apply to this program?

Subpart B—What Kind of Projects Does the Office of Education Assist?

195b.10 Does the Commissioner establish priorities?
195b.11 On what types of activities may a Statewide activities project focus?
195b.12 On what types of activities may an educational service or model project focus?
195b.13 On what types of activities may a professional development project focus?

Subpart C—How Does An Applicant Apply for a Grant?

195b.20 How to apply for a grant.

Subpart D—How Is a Grant Made?

195b.30 How does the Commissioner evaluate an application?
195b.31 What selection criteria does the Commissioner use to evaluate Statewide activities?
195b.32 What selection criteria does the Commissioner use to evaluate all other applications?

Subpart E—[Reserved]

Subpart F—What Conditions Must Be Met by the Grantee?

195b.50 Are there restrictions on the types of costs a grantee may support?
195b.51 Allowable costs.
195b.52 May an applicant apply for a multi-year grant?
195b.53 Must an LEA give the public an opportunity to comment on its application?

Authority: These regulations are issued under the authority contained in Part A of Title IX of the Elementary and Secondary Education Act as amended by Pub. L. 95-561, 92 Stat. 2292 (20 U.S.C. 3311-3318).

Subpart A—General

§ 195b.1 What general requirements apply to this program?

The provisions of Subpart A of Part 195 (§§ 195.1 through 195.9) apply to the discretionary grant programs under this part.

Subpart B—What Kind of Projects Does the Office of Education Assist?

§ 195b.10 Does the Commissioner establish priorities?

The Commissioner establishes programmatic priorities for funding from among the types of activities listed in §§ 195b.11, 195b.12, and 195b.13. In any given year the Commissioner announces—through publication of an application notice in the Federal Register—which of these types of activities will be funded.

(20 U.S.C. 3315)

§ 195b.11 On what types of activities may a Statewide activities project focus?

A statewide activities project may be designed to accomplish one or more of the following:

(a) Develop a comprehensive statewide approach to meet the needs of gifted and talented students.

(b) Involve representatives of parent groups and other public and private organizations interested in education of gifted and talented students.

(c) Develop innovative strategies to identify and serve gifted and talented children, particularly the economically disadvantaged, the handicapped, or

those with culturally different backgrounds;

(d) Provide technical assistance to help public and private schools within the State identify and meet the needs of gifted and talented students in those schools.

(e) Conduct surveys to determine the programs required to meet the needs of gifted and talented children in the state;

(f) Provide a State coordinator or other official who has responsibility for development, improvement, coordination, and delivery of State services with respect to programs for the gifted and talented in local educational agencies.

(g) Develop and implement an in-service training program to train local educational personnel in the administration of appropriate and comprehensive methods for the identification and education of gifted and talented children.

(20 U.S.C. 3315(a)(5))

§ 195b.12 On what types of activities may an educational service or model project focus?

(a) An educational service or model project is principally designed to provide direct educational services to gifted and talented children. The project shall—

(1) Provide innovative, demonstration, or model approaches to educating gifted and talented students or particular categories of those students; or

(2) Operate, expand, or improve existing educational projects to meet the educational needs of gifted and talented students.

(b) An educational service or model project—in addition to meeting the educational needs of the gifted and talented—shall, as appropriate—

(1) Be capable of stimulating similar services and projects by being cost-effective and replicable;

(2) Provide project related in-service training for educational personnel;

(3) Involve persons and organizations outside the school in the planning and operation of the project;

(4) Be based on an existing high quality program that is addressing major needs in identification of and delivery of services to gifted and talented students;

(5) Focus services on special populations of the gifted and talented such as bilingual, early childhood, handicapped, economically disadvantaged, migrant, rural, native American, and/or culturally different; or

(6) Focus on a particular category of educational service, such as early childhood education, arts education, or other category of service.

(20 U.S.C. 3315(a)(1) and (3))

§ 195b.13 On what types of activities may a professional development project focus?

A professional development project shall—

(a) Provide graduate level instruction leading to a degree in gifted and talented education;

(b) Provide a variety of short-term courses and instruction, focusing on the education of gifted and talented children;

(c) Provide seminars and other high-level opportunities for leaders in education, public affairs, industry, and related fields to interact with and promote the professional development of potential leaders in the education of gifted and talented students;

(d) Provide internships or similar, practical, training experience through public or private agencies involved with gifted and talented children;

(e) Provide in-service training for personnel engaged in the education of gifted and talented children or in the supervision of such personnel;

(f) Provide workshops and conferences for SEAs, LEAs, boards of education parents, business and community groups, and other interested parties on issues related to educating gifted and talented students; or

(g) Develop specialized training materials for use by SEAs, LEAs, and other agencies or groups involved in training leaders in the education of gifted and talented students.

(20 U.S.C. 3315(a)(1), (2))

Subpart C—How Does an Applicant Apply for a Grant?

§ 195.20 How to apply for a grant.

The Commissioner makes a grant to an eligible applicant only if the applicant prepares and submits an application according to—

(a) The regulations in this part that govern discretionary grants;

(b) The applicable provisions in Part 100a of EDGAR;

(c) The procedures and priorities contained in the notices published in the Federal Register; and

(d) The instructions and forms included in the application package.

Subpart D—How Is a Grant Made?

§ 195b.30 How does the Commissioner evaluate an application?

(a) The Commissioner evaluates an application—

(1) For statewide activities projects on the basis of the criteria in § 195b.31.

(2) For all other discretionary projects on the basis of the criteria in § 195b.32.

(b) The Commissioner awards up to 100 possible points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses next to the heading of that criterion.

§ 195b.31 What selection criteria does the Commissioner use to evaluate Statewide activities?

(a) *Plan of operation.* (35 points)

(1) The Commissioner reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Commissioner looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide in accordance with the project's objectives equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; or

(D) The elderly.

(b) *Quality of key personnel.* (25 points)

(1) The Commissioner reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Commissioner looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (2) (i) and (ii) plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Commissioner considers evidence of past experience and training

in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (15 points)

(1) The Commissioner reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Commissioner looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (15 points)

(1) The Commissioner reviews each application for information that shows the quality of the evaluation plan for the project. (See EDGAR § 100a.590—Evaluation by the grantee.)

(2) The Commissioner looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (10 points)

(1) The Commissioner reviews each application for information that shows the applicant plans to devote adequate resources to the project.

(2) The Commissioner looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(20 U.S.C. 3315(a)(5))

§ 195b.32 What selection criteria does the Commissioner use to evaluate all other applications?

(a) *Plan of operation.* (10 points)

(1) The Commissioner reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Commissioner looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant will provide in accordance with project's objectives equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; or

(D) The elderly.

(vi) For grants made after October 1, 1980, if the applicant is a local educational agency, a clear description of how the applicant will provide an opportunity for participation of students enrolled in non-profit private schools.

(b) *Quality of key personnel.* (7 points)

(1) The Commissioner reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Commissioner looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (2) (i) and (ii) plans to commit to the project; and

(iv) The extent to which the applicant, as part of its non-discriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups:

(B) Women;

(C) Handicapped persons;

(D) The elderly.

(3) To determine the qualifications of a person, the Commissioner considers evidence of past experience and training in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (5 points)

(1) The Commissioner reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Commissioner looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (5 points)

(1) The Commissioner reviews each application for information that shows the quality of the evaluation plan for the project. (See EDGAR § 100a.590—Evaluation by the grantee.)

(2) The Commissioner looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and quantifiable.

(e) *Adequacy of resources.* (3 points)

(1) The Commissioner reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Commissioner looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Level and quality of program.* (25 points)

The Commissioner looks for information that shows the extent to which the applicant proposes a comprehensive program or provides quality courses or specialized services to develop the skills of the gifted and talented children being served, or, in the case of a professional development project, the skills of the participating professional personnel.

(g) *Selection of participants.* (15 points)

The Commissioner looks for information that shows the quality of the proposed procedures for identifying and selecting participants.

(h) *Specially trained personnel, mentors, or advisors.* (15 points)

The Commissioner looks for information that shows the extent to which the applicant will provide specially trained personnel or experienced mentors or advisors to direct or assist the participants.

(i) *Replication.* (5 points)

The Commissioner looks for information that shows the extent to which the proposed project can be adapted for use by other agencies.

(j) *Dissemination.* (5 points)

The Commissioner looks for information that shows the extent to which the applicant demonstrates a capacity to disseminate information about the project or specialized materials developed through the project.

(k) *Needs assessment.* (5 points)

The extent to which the applicant identifies the special educational needs of the gifted and talented children to be served directly or indirectly by the project.

(20 U.S.C. 3315(a) (1), (2), (3), (4), and (6))

Subpart E—[Reserved]

Subpart F—What Conditions Must Be Met by the Grantee?

§ 195b.50 Are there restrictions on the types of costs a grantee may support?

Funds may not be used for either—

(a) Construction, repair, remodeling, or alteration of facilities or sites;

(b) Stipends, transportation, or meals for participants in inservice training activities.

(20 U.S.C. 1221e-3(a)(1))

§ 195b.51 Allowable costs.

The following costs may be paid from a grant:

(a) If a project involves an internship, the payment to each participant of an allowance that is not in excess of the entering salary for professionals in the agency or institution in which the participant is placed.

(b) If the project involves a graduate fellowship, the payment of a stipend, tuition, and fees.

(c)(i) If the project involves inservice or national leadership training, the payment of tuition and fees for appropriate university or college courses.

(ii) If the project involves inservice training, the payment of reasonable costs for substitutes and for release time.

(20 U.S.C. 3315 (a)(1), (a)(2), and (a)(3))

§ 195b.52 May an applicant apply for a multiyear grant?

(a) An applicant may apply for funding for a multiyear project. However, each budget period is 12 months only. In its initial application, an applicant shall provide budget projections for each year after the first year.

(20 U.S.C. 3315)

(b) No financial assistance for a project may be provided to an LEA for a period in excess of 5 years.

(20 U.S.C. 3317(c))

(c) The applicant shall file an application for a continuation award for each year beyond the first year.

(d) EDGAR, §§ 100a.250 through 100a.253 governs multi-year projects and continuation awards.

(20 U.S.C. 3315)

§ 195b.53 Must an LEA give the public an opportunity to comment on its application?

An applicant that is an LEA shall certify that it held an open meeting in order to receive public comment on its application in accordance with § 100a.138–141 of EDGAR.

(20 U.S.C. 3386)

Note.—This Appendix will not be published in Title 45 of the Code of Federal Regulations.

Appendix—Assurances—State-administered program

The State assures the Commissioner that it will conduct the State-administered program to meet the educational needs of gifted and talented children—set out in Parts 195 and 195a—in accordance with the following provisions:

(a) Funds paid to the State educational agency (SEA) will be used for planning, developing, operating, and improving programs to meet the needs of gifted and talented children—

(1) On the State level, through administration, technical assistance, coordination, statewide planning and in-service training; and

(2) Through the award of competitive grants to local educational agencies (LEAs) for local educational projects.

(b) The programs and projects supported by funds under this part—

(1) Are designed to identify the educational needs of gifted and talented children;

(2) Are of sufficient size, scope, and quality to hold reasonable promise of making substantial progresss toward meeting those needs; and

(3) Give appropriate consideration to the special educational needs of disadvantaged gifted and talented children from low-income families.

(20 U.S.C. 3314(c)(1))

(c) The SEA will use not more than 10 percent of the funds received in any fiscal year under this part for administration, technical assistance, coordination, planning, and in-service training.

(20 U.S.C. 3314(c)(2)(A), (6))

(d) The SEA will provide to LEA's that are unable to compete—due to smaller size or lack of financial resources—technical assistance in preparing proposals and in planning, developing, and operating programs under this part.

(20 U.S.C. 3314(c)(6))

(e) The SEA will distribute to LEAs on a competitive basis 90 percent of the funds it receives for the purposes of this part.

(20 U.S.C. 3313(c)(2)(B))

(f) The SEA will make available not less than one-half of the funds available for the State administered program for LEA projects that include a component for the identification and education of disadvantaged gifted and talented children from low-income families.

(20 U.S.C. 3314(c)(3))

(g) Unless the following requirements cannot legally be met in the State—

(1) Assistance under this part will be made available to pupils and teachers in private elementary and secondary schools; and

(2) No LEA application for funds will be approved by the SEA unless it contains evidence that the LEA:

(A) Consulted with appropriate representatives of private school students; and

(B) Has taken other appropriate steps to ensure equitable participation in its project of gifted and talented children attending private elementary or secondary schools.

(20 U.S.C. 3314(c)(5) (A), (B); 3086)

[FR Doc. 80-9527 Filed 4-2-80; 8:45 am]

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Thursday
April 3, 1980

Part IX

Department of Health, Education, and Welfare

Office of Education

Community Education Program

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Office of Education
45 CFR Parts 160c, 163, 163a, 163b, 163c, 163d
Community Education Program

AGENCY: Office of Education, HEW.
ACTION: Final regulations.

SUMMARY: The Commissioner of Education issues final regulations to govern the Community Education Program authorized under the Community Schools and Comprehensive Community Education Act.

The program provides financial assistance to SEAs, LEAs, public agencies and nonprofit private organizations, and institutions of higher education for planning, establishing, expanding, and operating community education programs. Grants will also be awarded for promoting efficient use of school facilities, effective delivery of social services and the training of personnel involved in community education projects.

EFFECTIVE DATE: These regulations are expected to take effect 45 days after they are transmitted to Congress. These regulations will be transmitted to Congress several days before they are published in the **Federal Register.** If the Congress disapproves the regulations or takes certain adjournments, the effective date is changed by statute. If you want to know the effective date of these regulations, call or write the Office of Education contact person.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Castaldi, Community Education Program, 7th and D Streets SW., Room 5622, Washington, D.C. 20202. Telephone: (202) 245–0691.

SUPPLEMENTARY INFORMATION: The Commissioner of Education published in the **Federal Register** on June 29, 1979 (44 FR 38386) a notice of proposed rulemaking on the Community Education Program. On August 7, 1979 public meetings were held on the proposed regulations in all 10 Federal regional office cities. Interested persons were given 60 days to comment on these proposed regulations. During the 60 day comment period 79 individuals and organizations submitted 339 written comments and 57 people made statements or posed questions at the ten public meetings. The national Community Education Advisory Council, fulfilling its Congressional mandate, met on August 13, 1979 and made specific Council recommendations regarding the proposed regulations.

Part 160c has been deleted and the provisions of that part will now appear in the following new CFR parts: 163, 163a, 163b, 163c, and 163d.

All of these comments and recommendations have been carefully reviewed in the context of the provisions of the regulations to which they relate. A summary of the comments and responses is included in Appendix A to these regulations on a section by section basis. Changes as a result of some of these comments have been made in the final regulations. A genuine effort has been made to be fully responsive to the comments, within the constraints of the governing legislation and in keeping with the program purpose.

After the consideration of each comment, a response is included stating changes which have been made in the regulation, or the reasons why no change is considered necessary. The comments are arranged in order of the sections of the final regulations. Where the section number in the final regulations differs from that in the proposed rules, the proposed section number is also identified.

In response to suggestions by the public and other interested parties, these final regulations contain provisions that were not in the notice of proposed rulemaking. These include (1) certain provisions of the statute governing this program and (2) the general selection criteria found in the Education Division General Administrative Regulations (EDGAR §§ 100a.202 through 100a.206). The purpose of incorporating these provisions into the final regulations is to enable applicants and grantees to understand better the requirements of this program without having to refer to these additional documents.

Dated: March 17, 1980.

(Catalog of Federal Domestic Assistance No. 13.563 Community Education Program)

William L. Smith,
U.S. Commissioner of Education.

45 CFR is amended by deleting Part 160c and by adding the following Parts:

1. A new Part 163 is added as follows:

PART 163—COMMUNITY SCHOOLS AND COMPREHENSIVE COMMUNITY EDUCATION PROGRAM

Subpart A—General

Sec.

163.1 Description of the Community Education Act.
163.2 Regulations that apply to the Community Education Act.
163.3 Definitions.
163.4 What are the minimum elements of a community education program?
163.5 How are the minimum elements of a community education program applied?
163.6 Scope of eligible project activities.
163.7 Allowable costs: costs related to administration.
163.8 Limitations on costs.
163.9 Non-Federal contribution for related Federal programs.

Authority: Title VIII of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 95–561, 92 Stat. 2284, (20 U.S.C. 3281).

Subpart A—General

§ 163.1 Description of the Community Education Act.

(a) *General purpose.* The Community Education Act provides assistance to State educational agencies (SEAs), local educational agencies (LEAs), institutions of higher education, public agencies and nonprofit private organizations to support the costs of planning, establishing, expanding, and operating community education programs.

(b) *Specific purposes.* The purposes of the Act are to—

(1) Assure involvement of citizens in local and State community education efforts;

(2) Encourage the provision in school facilities of services funded under other Federal, State, and local programs;

(3) Encourage efficient use of schools and other public buildings;

(4) Develop capacity within States to support the continued growth of community education; and

(5) Encourage the coordination of community and human services and eliminate duplication and fragmentation of these services in State and local communities.

(c) *Types of projects.* The Community Education Act provides for—

(1) Grants to SEAs to administer State Community Education Programs described under the heading "Community Education—State Program";

(2) Grants to LEAs for projects described under the heading "Grants to Local Educational Agencies";

(3) Grants to or contracts with public agencies and nonprofit private organizations for profits described under the heading "Grants to Public Agencies and Nonprofit Private Organizations"; and

(4) Grants to institutions of higher education for projects described under the heading "Training Grants to Institutions of Higher Education".

(Sec. 802; 20 U.S.C. 3282)

§ 163.2 Regulations that apply to the Community Education Act.

(a) *Regulations that apply to the State formula program.* The following regulations apply to grants and

subgrants under the State Community Education Program:

(1) The Education Division General Administrative Regulations (EDGAR) in Part 100b (State-Administered Programs) and Part 100c (Definitions).

(2) The regulations in Subpart A (General) and under the heading, "Community Education—State Program" in this Part.

(b) *Regulations that apply to direct grant programs.* The following regulations apply to grants under the Community Education Act other than grants and subgrants under the State Community Education Program:

(1) The Education Division General Administrative Regulations (EDGAR) in Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Part, as applicable, except those for the Community Education—State Program.

(c) *Procurement contracts.* The regulations in this Part do not apply to procurement contracts under the Community Education Act. These contracts are subject to—

(1) Federal and HEW procurement regulations in 41 CFR Chapters 1 and 3; and

(2) Requirements and criteria in particular requests for proposals published in Commerce Business Daily.

(Sec. 801; 20 U.S.C. 3281)

§ 163.3 Definitions.

(a) *Definitions in EDGAR.* The following terms used in this Part are defined in Part 100c:

Applicant
Application
Commissioner
Elementary school
Grant
Institution of higher education
Local educational agency (LEA)
Nonprofit
Nonpublic
Private
Project
Public agency
Secondary school
State
State educational agency (SEA)
Subgrant

(b) *Program-specific definitions.* The following definitions apply specifically to this Part:

"Act" or "Community Education Act" means the Community Schools and Comprehensive Community Education Act of 1978, Title VIII of the Elementary and Secondary Education Act of 1965, as amended by the Education Amendments of 1978 (Pub. L. 95–561).

"Program" means a community education program that meets each of the minimum elements in § 163.4.

"Public facility" means a facility owned by any department or branch of a State, county, or municipal government.

"State Community Education Program" refers to the State formula program funded under Section 808 of the Act.

(Sec. 8012; 20 U.S.C. 3281)

§ 163.4 What are the minimum elements of a community education program?

In order to be considered for a grant under the Act, each community education program must have the following minimum elements:

(a) *Role of the local educational agency.*

(1) An LEA shall be involved directly and substantially in administering and operating the program.

(2) However, an LEA is not required to be solely responsible for administering and operating the program.

(b) *Community served.* The program shall serve an identified community. The community shall include, but need not be limited to, the attendance area for the regular instructional program of the schools of the LEA involved in administering and operating the program.

(c) *Community center.*

(1) *Facilities.*

(i) A public facility—such as a public elementary or secondary school or a public community college or junior college center—shall serve as a community center.

(ii) The community center may use satellite or mobile facilities to provide program activities and services. The satellite or mobile facilities may be nonpublic facilities that are made available for use by the public.

(2) *Scope of services and their relationship to regular instructional program.* To be a community center, the public facility shall offer educational, recreational, health care, cultural, and other related community and human services that—

(i) To the extent possible, are broad in their scope and nature. Program services may not be restricted to one or a limited number of program areas such as recreation or adult education, or to one or a limited number of groups of persons in the community;

(ii) To the extent possible, reinforce the regular instructional program of the elementary or secondary school(s) of the LEA involved in administering and operating the program; and

(iii) Extend the services offered by the public facility and the uses made of it by serving more groups or persons, lengthening the hours of service, and broadening the scope and nature of services.

(d) *Community needs.* The program shall include systematic and effective procedures—

(1) For identifying and documenting on a continuing basis the needs, interests, and concerns of the community served with respect to community education activities; and

(2) For responding to those needs, interests, and concerns.

(e) *Community resources and interagency cooperative arrangements.*

(1) The program shall identify and use educational, cultural, recreational, and other existing and planned resources located outside of the school or other public facility—including, but not limited to, services of volunteers—to enhance the size and quality of the program.

(2) The program shall be designed to encourage cooperation among public and private agencies to—

(i) Make maximum use of existing talents and resources; and

(ii) Avoid, to the extent feasible, duplication of services.

(3) An LEA that plans, directs, or operates a program under this part shall show evidence of cooperation between the LEA and any other public agency conducting a similar program or activity.

(f) *Program clients.* The program shall be designed to serve—

(1) All age groups in the community, including preschool children, children and youth, adults, and senior citizens; and

(2) Groups within the community with special needs for community education activities, such as persons of limited English-speaking ability, mentally or physically handicapped persons, or other groups of persons.

(g) *Community involvement in governance.*

(1) In order to meet the needs, interests, and concerns of the population to be served, the program shall be planned and operated in cooperation with the community.

(2) The program shall provide for active and continuous involvement on an advisory basis of—

(i) Individuals, institutions and groups representative of the community, and

(ii) Parents of school children—in planning, development and implementation of programs.

(Secs. 802, 803; 20 U.S.C. 3282, 3283)

§ 163.5 How are the minimum elements of a community education program applied?

(a) Each community education program shall—

(1) Already meet all of the minimum elements specified in § 163.4; or

(2) Be able to meet all of these minimum elements with the assistance provided under the project.

(b) The minimum elements apply to each community education program assisted under the project rather than to the project as a whole. However, the overall local project designed to plan, establish, expand, or operate these programs may be administered in a central office of the LEA.

(Secs. 802, 803; 20 U.S.C. 3282, 3283)

§ 163.6 Scope of eligible project activities.

(a) *General rule.* A community education program may include some or all of the types of activities and services specified in Section 807 of the Act including—

(1) Educational, cultural, recreational, health care, and other related community and human services, whether or not in the form of formal courses;

(2) Activities making the school or other public facilities and equipment available for use by public agencies and private nonprofit organizations, individuals and groups in the community;

(3) Preventive health, dental care, and nutrition;

(4) Special programs for particular target groups, such as older persons;

(5) Services designed to eliminate the high incidence of suspension, expulsion, and other disciplinary action involving chronically maladjusted students;

(6) Services for students who withdraw from school before completing secondary school requirements, regardless of age or time of withdrawal;

(7) Services for mentally or physically handicapped individuals or other health impaired individuals;

(8) Rehabilitation purposes for juvenile and adult offenders;

(9) Parent education for care, development, and education of handicapped children;

(10) Training programs in institutions of higher education for the purpose of assisting full-time training for personnel who are engaged in or who intend to engage in community education programs;

(11) Specialized high schools or schools within schools organized around particular interest such as the arts, or using flexible scheduling and summer learning programs to take into account special needs of students, or creating interrelationships between secondary schools and such community resources as museums, cultural centers, and institutions of higher education;

(12) Development of means to use technology to improve the relationship between the school, the home, and community resources such as libraries, museums, and cultural centers;

(13) Early childhood and family education grants for programs operated by State and local educational agencies and public and private, nonprofit agencies or organizations for children below age six, which may include identification of potential barriers to learning, education of parents in child development, family services, education for parenthood programs and referral services; and

(14) Leisure education.

(Sec. 807, 20 U.S.C. 3287)

(b) *Federal share.* The project to which the Federal share is applied includes activities of planning, establishing, expanding, and operating a community education program that meets or is making progress toward meeting the requirements in § 163.4.

§ 163.7 Allowable costs: costs related to administration.

Allowable costs of a project include leadership, coordinating, administrative, and technical assistance activities involved in planning, establishing, expanding, or operating one or more community education programs. These activities may include but are not limited to—

(a) Employing a community education administrator and the administrator's staff;

(b) Training for the administrator and appropriate members of the administrator's staff, the grantee's chief executive officer and appropriate members of that staff;

(c) Scheduling services and activities;

(d) Assessing community needs and interests;

(e) Recruiting program participants and administrative and instructional staff;

(f) Disseminating information to the community and to other interested persons and organizations;

(g) Obtaining community participation in planning and carrying out the program;

(h) Organizing and training community education task forces or advisory councils and assisting them to plan and carry out their activities;

(i) Budgeting and managing the program;

(j) Identifying and obtaining the participation of other community service providers;

(k) Planning and developing the program;

(l) Evaluating the program, including any outside evaluation of the program;

(m) Coordinating the community education program activities and services throughout the community;

(n) Obtaining technical assistance to carry out these activities; and

(o) Providing training and technical assistance to other projects.

§ 163.8 Limitations on costs.

(a) The following costs are allowable only if the conditions in (b) are met:

(1) Instructional salaries, materials, and equipment; and

(2) Other expenses directly related to the provision of specific community education program activities and services—such as course offerings and transportation for participants.

(b) These costs are allowed only if—

(1) Other public or private resources are unavailable;

(2) The charging of enrollment fees to program participants to cover these costs is not feasible or would create an excessive financial burden on potential program participants; and

(3) The proposed costs are reasonable in terms of the contributions which they will make to the purposes of the community education program.

(Secs. 803, 807; 20 U.S.C. 3283, 3287)

§ 163.9 Non-Federal contribution for related Federal programs.

(a) An SEA or LEA that receives funds under the Act for a community education program may use the fair value of the program as part of or all of the non-Federal contribution that is required under any program listed in paragraph (b) of this section, if both of the following conditions are met:

(1) A portion of any of those programs listed in paragraph (b) of this section is implemented in a building in which a community education program assisted under this Act is conducted; and

(2) There is a necessary and direct relation between the portion of the program in paragraph (b) of this section and any element of the community education program assisted under this Act.

(b) Programs referred to in paragraph (a) of this section include those under:

(1) The Public Health Service Act;

(2) The Headstart-Follow Through Act;

(3) Title XX of the Social Security Act, relating to child care, day care, and other services;

(4) The youth employment demonstration programs authorized under the Comprehensive Employment and Training Act;

(5) The Older Americans Act of 1965;

(6) The Vocational Education Act of 1963;

(7) The Adult Education Act;

(8) Titles I and X of the Higher Education Act of 1965; relating to community services, continuing

education programs, and community college programs;

(9) Titles I through IV and Titles VI through IX of the Economic Opportunity Act of 1964 (also known as the Community Services Act of 1974);

(10) The Legal Services Corporation Act;

(11) Safe Streets and Omnibus Crime Control Act of 1968;

(12) Science education programs assisted under the National Science Foundation Act of 1950;

(13) The Rehabilitation Act of 1973; and

(14) Such other community service programs as the Assistant Secretary of Education deems appropriate.

(Section 806; 20 U.S.C. 3286)

2. A new Part 163a is added as follows:

PART 163a—COMMUNITY EDUCATION—STATE PROGRAM

Subpart A—General

Sec.

163a.1 What general provisions apply to this program?

Subpart B—What Kinds of Activities Are Eligible for Funding Under the State Community Education Program?

163a.10 Purpose of State grants.
163a.11 Eligible activities.
163a.12 Duration of grants.

Subpart C—How Does a State Apply for a Grant?

163a.20 Documents a State must submit to receive a grant.
163a.21 Assistance to community education programs.
163a.22 Use of funds.
163a.23 Expanding community education programs.
163a.24 Distribution of funds.
163a.25 Evaluation procedures.
163a.26 Other State plan provisions.
163a.27 Ten-year plan.

Authority: Title VIII of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 95-561, 92 Stat. 2284 (20 U.S.C. 3281).

Subpart A—General

§ 163a.1 What general provisions apply to this program?

The provisions of Subpart A of 45 CFR Part 163, §§ 163.1 through 163.9, apply to the State Community Education Program under this part.

Subpart B—What Kinds of Activities Are Eligible for Funding Under the State Community Education Program?

§ 163a.10 Purpose of State grants.

The general purpose of the State Community Education Program is to assure capacity building in the State to support continued development of community education and attain greater State responsibility for this development within the five-year period of authorization of the Act. Specific purposes of the State Community Education Program are described in 45 CFR 163.1 (Description of the Community Education Act).

(Sec. 808, 20 U.S.C. 3288)

§ 163a.11 Eligible activities.

(a) The Commissioner funds SEAs—

(1) To provide financial assistance, through subgrants, to LEAs to plan, establish expand, and operate community education programs;

(2) To administer a State plan governing the community education program;

(3) To provide technical assistance, coordination, and information services; and

(4) To carry out dissemination activities, including conferences, among community education programs in the State.

(b) Any State may apply for a grant to support community education programs that meet or are making progress toward meeting each of the minimum elements in 45 CFR 163.4. This includes the development of new community education programs that will meet these minimum elements.

(Sec. 804; 20 U.S.C. 3284)

§ 163a.12 Duration of grants.

Each State plan will be effective for a period of three fiscal years. The budget period is 12 months.

(Sec. 804; 20 U.S.C. 3284)

Subpart C—How Does a State Apply for a Grant?

§ 163a.20 Documents a State must submit to receive a grant.

To receive a grant—a State through its SEA shall submit to—or have on file with, the Commissioner—

(a) A general application that complies with the requirements—including the assurances—of section 435 (single State application) of the General Education Provisions Act; and

(b) A State plan that complies with the requirements in 45 CFR 163a.21 through 163a.27. The State plan need not be submitted more often than once every three years. EDGAR establishes the rules for this in 45 CFR 100b.103.

(Sec. 808(a); 20 U.S.C. 3288(a))

§ 163a.21 Assistance to community education programs.

In its plan a State shall provide information to document that—

(a) Specific LEA community education programs that are assisted with funds distributed by the State under the State Community Education Program meet or will make substantial progress toward meeting the minimum elements in § 163.4; and

(b) Funds received by the State under the State Community Education Program and reserved for administrative activities—including technical assistance to LEAs—will relate to the development of community education programs that meet these minimum elements.

(Secs. 803, 808(a)(4)-(7); 20 U.S.C. 3283, 3288(a)(4)-(7))

§ 163a.22 Use of funds.

(a) In its plan a State shall explain procedures to ensure that funds received under the State Community Education Program will be used only to pay the Federal share of the eligible costs described in 45 CFR 163.6 (Scope of eligible project activities). Sufficient information must be provided with respect to—

(1) Activities carried out at the State level by the SEA; and

(2) Projects carried out locally with funds distributed by the State among LEAs within the State.

(Secs. 803, 804, 807; 20 U.S.C. 3283, 3284, 3287)

§ 163a.23 Expanding community education programs.

(a) *General.* In its plan a State shall furnish evidence that, to the extent practicable, funds under the State Community Education Program will be used to expand community education programs of the schools of LEAs within the State.

(b) *Expansion activities.* Expanding community education programs includes—

(1) Planning and establishing new community education programs; and

(2) Enlarging the scope of existing community education programs by—

(i) Increasing the number and types of services offered in these programs in response to community needs and interests;

(ii) Increasing the number of community residents, agencies, and organizations that participate in planning and implementing the programs, and improving the quality of that participation; or

(iii) Increasing the time during which public facilities are used in the programs.

(c) *State-wide assessment.* To satisfy paragraph (a) of this section, the State in its plan shall—

(1) Furnish evidence that the SEA has carried out, and describe the manner in

which it has carried out, an assessment to identify—

(i) Existing and planned community education programs throughout the State;

(ii) The locations with the strongest interest in and need for new community education programs;

(iii) Resources available to plan, establish, expand or operate community education programs throughout the State; and

(2) Describe the results of the assessment and the standards for selecting community education programs for funding based on this assessment.

(Sec. 808(a)(1); 20 U.S.C. 3288(a)(1))

§ 163a.24 Distribution of funds.

(a) *Distribution.* In its plan a State shall describe procedures for distributing among LEAs within the State 80 percent of the funds it receives for community education programs.

(b) *Standards.* The State plan must describe the standards and procedures for distributing these funds to LEAs—

(1) Considering the size of the population to be served by the community education programs of each LEA; and

(2) To achieve—

(i) Expansion of community education programs;

(ii) Assistance to existing or proposed community education programs of the highest quality; and

(iii) The most effective use of resources to meet community education needs throughout the State.

(Sec. 808(a)(3); 20 U.S.C. 3288(a)(3))

§ 163a.25 Evaluation procedures.

(a) In its plan a State shall describe procedures to evaluate annually the effectiveness of—

(1) Community education programs that receive financial and technical assistance under the State Community Education Program; and

(2) If possible, LEA programs receiving financial assistance under Sec. 809 of the Act.

(b) The State plan must describe—

(1) The specific criteria to be used in assessing the effectiveness of community education programs;

(2) The evaluation instruments to be used, or how they will be developed or selected; and

(3) The results of the most recently completed evaluation.

(Sec. 808(a)(11); 20 U.S.C. 3288(a)(11))

§ 163a.26 Other State plan provisions.

In its plan a State shall assure that—

(a) *State administration.* The State will meet the requirements in Section 808(a)(10) of the Act with regard to the reservation of 15 percent of the funds under the State allotment for the specified administrative activities of the SEA;

(b) *Remaining funds.* The SEA will use the remaining 5 percent of the funds under the State allotment—after awarding 80 percent to LEAs and reserving 15 percent under paragraph (a) of this section—to train and provide technical assistance to SEA personnel, other State agencies and State community education advisory councils for the purpose of enhancing State community education activities.

(c) *Cost-sharing.* The State will meet the requirements of Section 808(a)(9) of the Act concerning payment from non-Federal sources for the remaining costs of carrying out the State plan.

(Sec. 808(a)(9), (10); 20 U.S.C. 3288(a)(9), (10))

§ 163a.27 Ten-year plan.

(a) *General.* In its plan a State shall assure that, after consulting with appropriate State agencies, it will develop a ten-year plan for coordinating community education programs with all relevant community services, including but not limited to State and local recreation authorities and associations.

(b) *Specific information in the State plan.* The State plan must include the following information on the ten-year coordination plan:

(1) A specific timeline for its development, adoption, and implementation; and

(2) The agencies—including their relationship with the SEA—with which the State will consult in developing and carrying out the plan and the basis for including those agencies.

(c) *Completion, implementation.* The State shall complete its ten-year coordination plan no later than two years after the State receives its first grant under the State Community Education Program.

(Sec. 808(a)(2); 20 U.S.C. 3288(a)(2))

3. A new Part 163b is added as follows:

PART 163b—COMMUNITY EDUCATION—GRANTS TO LOCAL EDUCATIONAL AGENCIES

Subpart A—General

Sec.

163b.1 What general provisions apply to this program?

Subpart B—What Kinds of Projects Does the Office of Education Fund Under This Program?

163b.10 Eligible projects.
163b.11 Purpose of projects.
163b.12 Project period.

Subpart C—How Does an Applicant Apply for a Grant?

163b.20 Appication requirements.
163b.21 State review of local educational agency applications.

Subpart D—How Is a Grant Made?

163b.30 How the Commissioner evaluates an application from a local educational agency.
163b.31 Criteria for evaluating applications.

Subpart E—What Conditions Must be Met by a Grantee?

163b.40 Cost sharing.

Authority: Title VIII of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 95-561, 92 Stat. 2284 (20 U.S.C. 3281).

Subpart A—General

§ 163b.1 What general provisions apply to this program?

The provisions of Subpart A of 45 CFR Part 163, §§ 163.1 through 163.9, apply to the Community Education—Local Educational Agencies program under this part.

Subpart B—What Kinds of Projects Does the Office of Education Fund Under This Program?

§ 163b.10 Eligible projects.

The Commissioner awards direct grants to LEAs for the Federal share of the costs of planning, establishing, expanding, and operating community education programs.

(Sec. 809; 20 U.S.C. 3289)

§ 163b.11 Purpose of projects.

(a) *General purpose.* The Commissioner funds LEA projects that have the greatest potential for national impact. These projects must show promise for advancing community education by developing exemplary approaches, methods, or information that could be replicated by other LEAs throughout the Nation.

(b) *Eligible activities.* A project shall include the activities described under 45 CFR 163.6 (Scope of eligible project activities).

(Sec. 807, 809; 20 U.S.C. 3287, 3289)

§ 163b.12 Project period.

Approval of a project for more than a year and the award of continuation grants within the project period are covered in 45 CFR 100a.250–100a.254 of EDGAR.

(Sec. 809; 20 U.S.C. 3289)

Subpart C—How Does an Applicant Apply for a Grant?

§ 163b.20 Application requirements.

(a) The Commissioner considers making a grant to an LEA only if it submits an application meeting the requirements under 45 CFR Part 100a, Subpart C of EDGAR and any additional requirements that may be specified in the annual notice inviting applications.

(Sec. 809; 20 U.S.C. 3289)

(b) An application from an LEA must contain a certification that the LEA has held an open meeting regarding the contents of its application, to comply with the requirements of EDGAR, 45 CFR 100a.138–100a.141.

(20 U.S.C. 3386; 887(e))

§ 163b.21 State review of local educational agency applications.

(a) The Commissioner does not approve an application submitted by an LEA unless the SEA of the State in which that LEA is located has been given an opportunity to review and comment on the application.

(b) The procedures for this review and comment are described in 45 CFR 100a.155 through 100a.159 of EDGAR.

(Sec. 809(b); 20 U.S.C. 3289(b))

Subpart D—How Is a Grant Made?

§ 163b.30 How the Commissioner evaluates an application from a local educational agency.

(a) The Commissioner evaluates an application on the basis of the criteria in § 163b.31.

(b) The Commissioner awards up to 100 possible points for these criteria.

(c) The maximum possible score for each complete criterion is indicated in parentheses at the end of that criterion.

(d) Among projects judged to be relatively equal in quality (within 15 points), the Commissioner may select a project to—

(1) Ensure that a diversity of approaches are funded to meet a variety of community education needs throughout the country; and

(2) Avoid duplicating the activities of a currently funded project.

(Sec. 809, 20 U.S.C. 3289)

§ 163b.31 Criteria for evaluating applications.

The Commissioner evaluates an application from an LEA on the basis of the criteria in this section. The maximum possible score for all criteria is 100 points. The maximum possible score for each complete criterion is indicated in parentheses at the end of that criterion.

(a) *Plan of operation.* (1) The Commissioner reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Commissioner looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly. (10 points)

(b) *Quality of key personnel.* (1) The Commissioner reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Commissioner looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(3) To determine the qualifications of a person, the Commissioner considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides. (7 points)

(c) *Budget and cost effectiveness.* (1) The Commissioner reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Commissioner looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project. (5 points)

(d) *Evaluation plan.* (1) The Commissioner reviews each application for information that shows the quality of the evaluation plan for the project. (See 45 CFR 100a.590 of EDGAR—Evaluation by the grantee.)

(2) The Commissioner looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable. (5 points)

(e) *Adequacy of resources.* (1) The Commissioner reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Commissioner looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate. (3 points)

(f) *Quality of community education programs.* The quality of the existing or planned community education programs involved in the project in meeting all the minimum elements in § 163.4. In applying this criterion, the Commissioner focuses particularly on—

(1) *School involvement.* (i) The extent to which the local boards of education are involved in program administration and their commitment to the support and improvement of the program;

(ii) Mutual reinforcement, to the extent feasible, between the regular instructional program of the school and community education activities and services; and

(iii) Maximum use of existing school facilities;

(2) *Needs and Services.* (i) The extent to which the program provides services and activities that respond to identified local needs; and

(ii) The extent to which the applicant recognizes and resolves geographic and other constraints to potential participation in the program;

(3) *Agency coordination.* The adequacy of arrangements to—

(i) Achieve maximum coordination and cooperation among public and private agencies;

(ii) Use existing resources—including arrangements to link the program with programs listed in Section 806 of the Act; and

(iii) Avoid duplication in service delivery; and

(4) *Community participation.* The extent of community participation in all

aspects of the program, including needs and resource assessment, application preparation, and implementing and evaluating the program. (30 points)

(g) *Potential for advancing community education.* The project's potential for advancing community education nationally. In applying this criterion, the Commissioner considers the quality of the project in developing any one or a combination of the following:

(1) *Citizen involvement.* The degree to which the project develops exemplary methods of citizen involvement in the governance of a community education program.

(2) *Use of resources.* The degree to which the project develops exemplary methods for the efficient and effective use of human and material resources.

(3) *Incorporating community education.* The degree to which the project develops exemplary methods of incorporating community education as an integral part of an LEA and building long-term support for community education. (30 points)

(h) *Evaluation and potential for replication.* The degree to which the project's results will be evaluated and the degree to which the project is replicable. In applying this criterion, the Commissioner considers—

(1) Whether there is a proposed plan for having the project evaluated;

(2) The proposed use of quantifiable data to measure the extent to which the project achieves its objectives; and

(3) Provisions to develop from the project usable information—including characteristics, practices, procedures, and materials—capable of being disseminated to a broad national audience or to a special client population. (10 points)

(Sec. 809; 20 U.S.C. 3289)

Subpart E—What Conditions Must be Met by a Grantee?

§ 163b.40 Cost sharing.

(a) An LEA that receives a grant shall meet the cost sharing requirement in Section 815(b) of the Act.

(b) The Federal share of the cost of a project is 90 percent for fiscal years 1979 and 1980, and 80 percent for fiscal years 1981, 1982, and 1983.

(c) Cost sharing is subject to the requirement in 45 CFR Part 74, Subpart G.

(Sec. 815(b); 20 U.S.C. 3295(b))

4. A new Part 163c is added as follows:

PART 163c—COMMUNITY EDUCATION—GRANTS TO PUBLIC AGENCIES AND NONPROFIT PRIVATE ORGANIZATIONS

Subpart A—General

Sec.

163c.1 What general provisions apply to this program?

Subpart B—What Kinds of Projects Does the Commissioner Assist Under This Program?

163c.10 Who is eligible to apply under this program?
163c.11 What kinds of projects does the Commissioner assist?
163c.12 State educational agency projects.
163c.13 Projects of other public agencies and nonprofit private organizations.
163c.14 Project period.

Subpart C—How Does an Applicant Apply for a Grant?

163c.20 Application requirements.

Subpart D—How Is a Grant Made?

163c.30 How the Commissioner judges applications from public agencies and nonprofit private organizations.
163c.31 Criteria for evaluating applications from State educational agencies.
163c.32 Criteria for evaluating applications from other public agencies and nonprofit private organizations.

Subpart E—What Conditions Must be Met by a Grantee?

163c.40 Cost sharing.

Authority: Title VIII of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 95-561, 92 Stat. 2284 (20 U.S.C. 3281).

Subpart A—General

§ 163c.1 What general provisions apply to this program?

The provisions of Subpart A of 45 CFR Part 163, §§ 163.1 through 163.9, apply to the Community Education—Grants to Public Agencies and Nonprofit Private Organizations program under this part.

Subpart B—What Kinds of Projects Does the Commissioner Assist Under This Program?

§ 163c.10 Who is eligible to apply under this program?

The Commissioner may make grants to or contracts with public agencies—including a separate grant category to SEAs—and nonprofit private organizations.

§ 163c.11 What kinds of projects does the Commissioner assist?

(a) *Purpose of projects.* The Commissioner makes grants to encourage the use of school facilities and other public facilities for the efficient and coordinated delivery of community services in community education programs or in other activities described in Section 806(b) of the Act, and 45 CFR 163.7(b) of the regulations.

(b) *Notice of funding reservations.* The Commissioner publishes a notice periodically in the **Federal Register** inviting applications for the program and notifying prospective grant applicants of—

(1) Activities to be carried out by contracts; and

(2) The amount of funds reserved for grants to SEAs and to other public agencies and nonprofit private organizations.

(c) *Non-duplication.* The Commissioner does not award a grant to support activities that duplicate any activities that the Commissioner funds through a contract under the program. For example, if the Commissioner awards a contract to involve parks and recreation agencies in program activities, the Commissioner does not award a grant for these activities.

(Sec. 810; 20 U.S.C. 3290)

§ 163c.12 State educational agency projects.

Grants to SEAs are designed to achieve the purposes in § 163.1(b). A grant supports an SEA in—

(a) Developing and carrying out State-level planning and interagency coordination and statewide dissemination; and

(b) Providing developmental and technical assistance to one or more specific community education programs administered by an LEA or to one or more coordinated programs under Section 806(b) of the Act.

(Sec. 810; 20 U.S.C. 3290)

§ 163c.13 Projects of other public agencies and nonprofit private organizations.

(a) *General.* The Commissioner awards grants to public agencies other than SEAs and to nonprofit private organizations to encourage the use of school facilities and other public facilities for—

(1) Community education programs; and

(2) The improvement and development of exemplary procedures to coordinate delivery of community and human services in these facilities.

(b) *National significance.* The Commissioner awards grants only to projects that have the potential of furthering community education purposes nationally. A project may have this potential because either—

(1) The activities under the project are national in scope; or

(2) The project involves a particularly innovative or exemplary idea or

approach that is worthy of being replicated at other sites or by other organizations throughout the Nation.

(c) *Specific types of projects.* Eligible activities include coordination, sharing of information, technical assistance, and training. A project may focus on—

(1) Training a particular national, regional, or statewide group interested in community education or in the coordinated delivery of community and human services in schools and other public facilities;

(2) Developing working relationships between two or more of these groups; or

(3) Developing, testing, and disseminating exemplary models of local activities to promote improved coordination of community and human services in schools and other public facilities.

(Sec. 810; 20 U.S.C. 3290)

(d) *Outcomes.* Each proposed project shall provide for—

(1) *Evaluation.* An evaluation of the effectiveness of the project, including evaluative reports and products that describe the project, its results, and an analysis of its impact on community education.

(2) *Information.* The development of information that is useful in training others or for distribution to interested persons; and

(3) *Dissemination.* Methods to distribute nationally to all interested parties materials developed as a result of the project.

(Sec. 810; 20 U.S.C. 3290)

§ 163c.14 Project period.

The provisions in 45 CFR 163b.12 concerning project duration apply to grants to SEAs, other public agencies, or nonprofit private organizations.

(Sec. 810; 20 U.S.C. 3290)

Subpart C—How Does an Applicant Apply for a Grant?

§ 163c.20 Application requirements.

The application requirements described in § 163b.20 apply to this program.

(Sec. 810; 20 U.S.C. 3290)

Subpart D—How Is a Grant Made?

§ 163c.30 How the Commissioner judges applications from public agencies and nonprofit private organizations.

(a) The Commissioner evaluates an application on the basis of the criteria in §§ 163c.31 or 163c.32.

(b) The Commissioner awards up to 100 possible points for these criteria.

(c)The maximum possible score for each complete criterion is indicated in parentheses at the end of that criterion.

(d) Among projects judged to be relatively equal in quality (within 15 points), the Commissioner may select a project to—

(1) Ensure that a diversity of approaches are funded to meet a variety of community education needs throughout the country; and

(2) Avoid duplicating the activities of a currently funded project.

(20 U.S.C. 3289)

§ 163c.31 Criteria for evaluating applications from State educational agencies.

The Commissioner evaluates an application from an SEA on the basis of the criteria in this section. The maximum possible score for all criteria is 100 points. The maximum possible score for each complete criterion is indicated in parentheses at the end of that criterion.

(a) *Plan of operation.*

(1) The Commissioner reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Commissioner looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly. (10 points)

(b) *Quality of key personnel.* (1) The Commissioner reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Commissioner looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(3) To determine the qualifications of a person, the Commissioner considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides. (7 points)

(c) *Budget and cost effectiveness.* (1) The Commissioner reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Commissioner looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project. (5 points)

(d) *Evaluation plan.* (1) The Commissioner reviews each application for information that shows the quality of the evaluation plan for the project. (See 45 CFR 100a.590 of EDGAR—Evaluation by the grantee.)

(2) The Commissioner looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable. (5 points)

(e) *Adequacy of resources.* (1) The Commissioner reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Commissioner looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate. (3 points)

(f) *Quality of State-level activities.* The quality of State-level activities to develop community education. In applying this criterion, the Commissioner considers the degree to which the SEA has developed and will carry out—

(1) An assessment of State-level agencies and organizations providing programs and services related to community education and of resources available to the SEA in developing its community education activities;

(2) Provisions for participation by State agencies, organizations, personnel,

and the public in the development of the SEA application and in the implementation and evaluation of the project;

(3) A plan for cooperation among existing resources of State agencies, public and private organizations, and State associations providing community and human services related to community education;

(4) A plan for coordination with institutions of higher education for training of—SEA community education personnel, personnel of LEAs assisted by the State project, and personnel of federally funded LEA community education projects in the State;

(5) Activities to foster the inclusion of programs listed in Section 806 of the Act (45 CFR 163.7 of the regulations) in community education programs; and

(6) Activities to create greater awareness of community education among State agencies, organizations, and associations. (30 points)

(g) *Quality of technical assistance.* The overall quality of the plan for assisting local community education programs. In applying this criterion, the Commissioner considers the degree to which the SEA has planned for and will carry out—

(1) A needs assessment of LEAs;

(2) Activities to assist LEAs in developing community education programs, including—

(i) Assisting LEAs to meet the minimum elements of a community education program;

(ii) Helping LEAs plan and develop applications for assistance under the Act;

(iii) Helping to establish and coordinate community education task forces and advisory bodies;

(iv) Providing for the training of local directors of community education programs and their staffs and community members;

(v) Providing assistance in the dissemination of information about community education programs;

(vi) Helping community education programs to develop and conduct evaluations; and

(vii) Helping LEAs bring their community education programs into conformity with any State plan for community education.

(3) A process for involving LEAs, institutions of higher education, and appropriate individuals and groups in the preparation and operation of the technical assistance program. (30 points)

(d) *National impact.* The project's potential usefulness to other SEAs and potential for national impact on the advancement of community education. (10 points)

(Sec. 810; 20 U.S.C. 3290)

§ 163c.32 Criteria for evaluating applications from other public agencies and nonprofit private organizations.

The Commissioner evaluates an application from other public agencies and nonprofit organizations on the basis of the criteria in this section. The maximum possible score for all criteria is 100 points. The maximum possible score for each complete criterion is indicated in parentheses at the end of that criterion.

(a) *Plan of operation.* (1) The Commissioner reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Commissioner looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly. (10 points)

(b) *Quality of key personnel.* (1) The Commissioner reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Commissioner looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(3) To determine the qualifications of a person, the Commissioner considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides. (7 points)

(c) *Budget and cost effectiveness.* (1) The Commissioner reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Commissioner looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project. (5 points)

(d) *Evaluation plan.* (1) The Commissioner reviews each application for information that shows the quality of the evaluation plan for the project. (See 45 CFR 100a.590 of EDGAR—Evaluation by the Grantee.)

(2) The Commissioner looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable. (5 points)

(e) *Adequacy of resources.* (1) The Commissioner reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Commissioner looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate. (3 points)

(f) *Client involvement.* (1) The extent to which the applicant plans to involve potential clients of the project in the design and operation of the project; and

(2) Provisions to assure that the applicant has entered or will enter into contractual arrangements or other suitable forms of agreement with the LEA involved in the proposal. (20 points)

(g) *Potential for advancing community education.* The degree to which the proposed project has the potential for advancing community education nationally. In applying this criterion, the Commissioner considers the degree to which the project—

(1) Includes unique or diverse methods of fostering interagency cooperative methods;

(2) Provides a plan to affect a given audience or group nationally; or

(3) Provides different methods of developing community education permanence within the applicant agency or organization. (30 points)

(h) *Dissemination.* The degree to which the applicant plans to evaluate the project results and disseminate them

to a national audience. In applying this criterion the Commissioner considers—

(1) The applicant's proposed plan for developing an evaluation of the project;

(2) The applicant's proposed plan to develop usable information, including characteristics, practices, procedures, and materials, resulting from the project; and

(3) The applicant's provisions for disseminating the project results to a broad audience or to special client groups that could benefit from knowledge or project results. (20 points)

(Sec. 810; 20 U.S.C. 3290)

Subpart E—What Conditions Must be Met by a Grantee?

§ 163c.40 Cost sharing.

(a) An SEA, other public agency, or nonprofit private organization that receives a grant shall meet the cost sharing requirement in Section 815(c) of the Act.

(b) The Federal share of the cost of a project is 80 percent for fiscal years 1979 and 1980 and 90 percent for fiscal years 1981, 1982, and 1983.

(c) Cost sharing is subject to the requirement in 45 CFR Part 74, Subpart G.

(Sec. 815(c), 20 U.S.C. 3295(c))

5. A new Part 163d is added as follows:

PART 163d—COMMUNITY EDUCATION—TRAINING GRANTS TO INSTITUTIONS OF HIGHER EDUCATION

Subpart A—General

Sec.

163d.1 What general provisions apply to this program?

Subpart B—What Kinds of Training Projects Does the Commissioner Fund?

163d.10 Eligible applicants.
163d.11 Types of projects.
163d.12 Training activities.
163d.13 Project period.

Subpart C—How Does an Applicant Apply for a Grant?

163d.20 Application requirements.

Subpart D—How is a Grant Made?

163d.30 How the Commissioner judges projects for training grants to institutions of higher education.
163d.31 Criteria for evaluating applications for training projects from institutions of higher education.

Authority: Title VIII of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 95-561, 92 Stat. 2284 (20 U.S.C. 3281).

Subpart A—General

§ 163d.1 What general provisions apply to this program?

The provisions of Subpart A of 45 CFR Part 163, §§ 163.1 through 163.9, apply to the Training Grants to Institutions of Higher Education program under this part.

Subpart B—What Kinds of Training Projects Does the Commissioner Fund?

§ 163d.10 Eligible applicants.

The Commissioner awards grants to institutions of higher education to pay all or part of the costs of developing, establishing, expanding, or operating programs to provide training for personnel who are engaged in or who intend to engage in community education programs.

(Sec. 812; 20 U.S.C. 3292)

§ 163d.11 Types of projects.

(a) Projects may focus on one or more of the following areas of training:

(1) General community education training designed to introduce persons interested in commencing and developing community education programs to the practices, procedures, and history of community education.

(2) Training of SEA community education leaders in managing a State program and in providing technical assistance to local districts throughout their State.

(3) Develop training materials based on proven effective strategies that have been used to implement community education programs at the State, local, and institution of higher education levels.

(4) Disseminating information about national training and bringing together different organizations and institutions providing training to persons in community education.

(5) Training by Statewide, regional, or national consortia composed of a variety of skilled trainers—

(i) To provide interdisciplinary training to persons interested in community education; or

(ii) To provide training on new methods of collaboration among agencies and institutions providing services in community education.

(6) Other areas of training in community education.

(b) The Commissioner publishes a notice annually in the **Federal Register** inviting applications for the program. The notice may establish priorities among these areas or reserve funds for them.

(Sec. 812; 20 U.S.C. 3292)

§ 163d.12 Training activities.

The training shall be—

(a) Provided on a continuing basis over the course of the grant period, with provisions for follow-up and reinforcement of specific training skills or activities; and

(b) Offered at times and in a manner that will allow participation by recipients without disrupting their responsibilities for planning and working with community education programs; and

(c) Develop in consultation with appropriate SEAs and LEAs.

(Sec. 812, 20 U.S.C. 3292)

§ 163d.13 Project period.

The provisions in § 163b.12 concerning project duration apply to training grants to institutions of higher education.

(Sec. 812, 20 U.S.C. 3292)

Subpart C—How Does an Applicant Apply for a Grant?

§ 163d.20 Application requirements.

The application requirements described in § 163b.20 apply to this program.

(Sec. 812, 20 U.S.C. 3292)

Subpart D—How is a Grant Made?

§ 163d.30 How the Commissioner judges projects for training grants to institutions of higher education.

(a) The Commissioner evaluates an application on the basis of the criteria in § 163d.31.

(b) The Commissioner awards up to 100 possible points for these criteria.

(c) The maximum possible score for each complete criterion is indicated in parentheses at the end of that criterion.

(d) Among projects judged to be relatively equal in quality (within 15 points), the Commissioner may select a project to—

(1) Ensure that a diversity of approaches are funded to meet a variety of community education needs throughout the country; and

(2) Avoid duplicating the activities of a currently funded project.

(Sec. 809, 20 U.S.C. 3289)

§ 163d.31 Criteria for evaluating applications for training projects from institutions of higher education.

The Commissioner evaluates an application from an institution of higher education on the basis of the criteria in this section. The maximum possible score for all criteria is 100 points. The maximum possible score for each complete criterion is indicated in parentheses at the end of that criterion.

(a) *Plan of operation.*

(1) The Commissioner reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Commissioner looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly. (10 points)

(b) *Quality of key personnel.*

(1) The Commissioner reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Commissioner looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in pararaphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(3) To determine the qualifications of a person, the Commissioner considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides. (7 points)

(c) *Budget and cost effectiveness.*

(1) The Commissioner reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Commissioner looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project. (5 points)

(d) *Evaluation plan.*

(1) The Commissioner reviews each application for information that shows the quality of the evaluation plan for the project. (See §100a.590 of EDGAR—Evaluation by the grantee.)

(2) The Commissioner looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable. (5 points)

(e) *Adequacy of resources.*

(1) The Commissioner reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Commissioner looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate. (3 points)

(f) *Quality of project.* The quality of the proposal in addressing one or more of the areas of training described in § 163d.11(a). (15 points)

(g) *Knowledge of existing community education training.*

The extent to which the proposed project reflects and builds upon a knoweldge of existing community education training and research related to the specific training area. (10 points)

(h) *Client involvement.* The extent to which the applicant plans to involve potential clients of the project in designing and implementing the project. (10 points)

(i) *Potential for advancing community education.* The degree to which the proposed project has the potential for advancing community education nationally. In applying this criterion, the Commissioner considers such factors as the degree to which the project—

(1) Includes unique or diverse methods of fostering interagency cooperative methods;

(2) Provides a plan to affect a given audience or group; and

(3) Provides different methods of developing community education permanence within the agency or organization being trained. (20 points)

(j) *Dissemination.* The degree to which the applicant plans to evaluate the project results and disseminate them to a national audience. In applying this criterion, the Commissioner considers—

(1) The applicant's proposed plan for developing and evaluation of the project;

(2) The applicant's proposed plan to develop usable information, including characteristics, practices, procedures, and materials resulting from the project; and

(3) The applicant's provisions for disseminating the project results to a broad audience or to a special client group that could benefit from knowledge of the project results. (15 points)

(Sec. 812; 20 U.S.C. 3292)

Note.—This Appendix A will not be published in Title 45 of the Code of Federal Regulations.

Appendix A—Summary of Comments and Responses

The comments received on these regulations are included below. A response is included after each comment stating changes which have been made in the regulations, or the reason why no change is made. The section numbers in these final regulations are different from those in the NPRM. The new section numbers are followed by the NPRM section number in parentheses.

Subpart A—General

Comment. A large number of commenters generally supported the regulations, expressed satisfaction that they were clear and understandable, and noted appreciation for the work which had been done. One commenter was pleased with the attempt to simplify the NPRM and to minimize education jargon but requested that these efforts be continued during the revision process. Several persons commended the effort to provide meaningful information in the NPRM "Supplementary Information" section of the preamble and suggested that this material be incorporated into the final regulations.

Response. The Commissioner is well aware of the need to provide regulations which are simple, clear, and as brief as possible and, at the same time, provide regulations that govern program administration. Considerable attention has been given to spelling out the basic concepts of community education in the final regulations. Additional information has been detailed in the responses to comments in this appendix. These regulations are the result of extensive interaction with the public. The Commissioner has attempted to produce a document that will clarify the concept of community education as intended by Congress and assist applicants to apply for funding under the Community Schools and Comprehensive Community Education Act.

§ 163.1 (160c.1) Description of the Community Education Act.

Comment. A few commenters expressed support for this section. Others objected to the restriction of Federal funds to "administrative and coordinating costs" and suggested that project-related costs of operation and provision of services be eligible for support.

Response. A change is made. The phrase "administrative and coordinating" has been deleted from § 163.1(a) (160c.1(a) in the NPRM). The Commissioner encourages the funding of leadership, administrative, and coordinating activities involved in planning, establishing, expanding, or operating community education programs. Changes have been made in § 163.8 (160c.6) to allow the Federal share to include costs beyond those described in the proposed regulations. The project may include costs such as instructor salaries, instructional materials and equipment, and other incidental expenses directly related to the provision of specific community education program activities and services, course offerings, and transportation of participants. The grantee must consider whether—

(1) Other public or private resources are unavailable for such costs;

(2) The charging of enrollment fees to program participants to cover such costs is not feasible or would create an excessive financial burden on potential program participants; and

(3) The proposed costs are reasonable in terms of the contributions they will make to the purposes of the community education program. Further information is provided in the response to the comment on § 163.8 (160c.6).

Comment. One commenter recommended that this section of the regulations be expanded beyond providing funding for community education programs.

Response. No change is made. While § 163.1(a) (160c.1(a)) lists the entities eligible for Federal assistance under the Act, § 163.1(b) (160c.1(b)) details the more specific purposes of the Act. These purposes reflect the broader purpose and intent of Congress in creating the Community Schools and Comprehensive Community Education Act.

Comment. One person suggested an additional purpose be added to § 163.1(b) (160c.1(b)) to read as follows: "Increase the capacity of local and State education systems to involve the community at large in planning a comprehensive program, services, and activities and to mobilize the resources for carrying out these community purposes."

Response. No change is made. The above recommendation contains two important elements of community education—the involvement of citizens in State and local comprehensive programming and the maximum utilization of community resources. These two areas are sufficiently addressed in § 163.1(b) (160c.1(b)), particularly § 163.1(b) (1) and (5) (160c.1(b) (1) and (5)) which are based on the authorizing statute.

§ 163.3 (160c.3) Definitions.

Comment. One commenter felt that there should be a specific definition of "new models" as used in §§ 163b.31(c)(1), (2), (3) (160c.35(c)(1), (2), (3)), and 163c.13(a), (b), (d)(3) (160c.42(a), (b), (d)(3)).

Response. A change is made. The term "new" is deleted from the regulations. Please refer to comments and responses for § 163b.31 (160c.35).

Comment. Another commenter suggested changing the term "Community Education Program" used in this section and in § 163.4 (160c.4) to "Community Education System".

Response. No change is made. The Commissioner is aware that community education is unique in that it is a total process, involving a community in assessing needs and identifying resources to meet those needs, as opposed to the direct provision of program services. It is with this understanding that the term "program" is used, meaning a community education program that meets the minimum elements in § 163.4 (160c.4) of the regulations.

§ 163.4 (160c.4) What are the minimum elements of a community education program?

Comment. Several commenters expressed support for the seven minimum elements as written. In addition, most of the individuals commenting on specific paragraphs of this section expressed support for the seven elements. One commenter recommended the use of eight elements as in the previous regulations. A number of comments also urged a stronger role for citizen involvement. One commenter, on the other hand, expressed concern about "certain" minimum elements that are either more specific than the law or without specific references in the law.

Response. Certain clarifying changes have been made to insure that the minimum elements are consistent with the authorizing statute. The Act defines a community education program as "a program in which a public building, including but not limited to a public elementary or secondary school, or a community or junior college (or a related extension center), is used as a community center operated by an LEA in conjunction with other groups in the community, community organizations, and local governmental agencies, to provide educational, recreational, health care, cultural, and other related community and human services for the community that the center serves in accordance with the needs, interests, and concerns of that community."

To clarify this definition, the regulations, in § 163.4 (160c.4), describe the minimum elements of a community education program. These elements apply to each community education program to be assisted under the program, whether through direct grants or under the State formula program.

The definition of community education is substantially the same as the definition in the earlier Community Schools Act of 1974. Likewise, the minimum elements, with some minor changes, remain substantially the same as those in the previous regulations. These elements have been widely supported throughout the history of the program. The present regulations build upon this strong legislative history. These elements are based on the language and intent of the present Act. Certain revisions are made in the final regulations to insure that the minimum elements are consistent with language in the Act. These elements have been carefully developed with the assistance of community education constituents. They are based on current research literature and have widespread acceptance throughout the Nation.

(a) *Role of local educational agency.*

Comment. Two commenters expressed support for the wording of this subpart in the NPRM. A few commenters suggested that the language in the NPRM might eliminate participation by other agencies. Two persons stated that the role of the school should be much stronger. Another commenter questioned whether a community college is eligible to participate in the program as an LEA. Another commenter suggested the concept of an LEA be broadened to include community agencies and organizations.

Response. No change is made. The term "local educational agency" (LEA) is generally defined in Section 1001(f) of the Elementary and Secondary Education Act as "a public board of education or other public authority legally constituted within a State for administrative control or direction of, or to perform a service function for public

elementary and secondary schools * * *" This definition was used in the community education regulations under the Community Schools Act of 1974.

Particular agencies that fall within the definition of "local educational agency" will be recognized as eligible applicants. The regulatory and statutory elements include (1) status as a public authority; (2) legal mandate or authority under State law to perform a service function; and (3) the existing or prospective performance of the service function for public elementary and secondary schools.

For the purposes of the Act, a public authority would, for example, be eligible if it were authorized pursuant to State law to carry out and were carrying out (or proposed to carry out) a community education program (meeting the minimum elements) set forth in § 163.4 (160c.4) in a public elementary or secondary facility. It would not be necessary that the public authority have the sole or primary purpose of providing a service function for public elementary or secondary schools, so long as the public authority had the legal authority to perform such a service function. (Documentation with respect to the status of an agency under State law as a "public authority" and as to its authority to perform a service function for public elementary or secondary schools could be provided through submission of an opinion of counsel or other appropriate legal opinion.)

Comment. One commenter raised questions relative to the meaning of "school". Another commenter suggested that the term "school district" be used instead of "school". Another commenter suggested that the term "local education agency" be used.

Response. A change is made. A school is unlikely to undertake a project without the support of the LEA since ultimate administrative and operational responsibility is vested at this level. Although a single school may be responsible for a community education project, the LEA has the ultimate responsibility in the project. Therefore, the term "local educational agency" is used in subsections 163.4 (a) and (b) (160c.4 (a) and (b)).

Comment. One commenter suggested that advisory committees be required for all programs.

Response. No change is made. The formation and operation of advisory committees is one method of assuring community and citizen involvement, provided for in Sec. 808(7) of the Act and § 163.4(g) (160c.4(g)) of the regulations. However, neither the Act nor the regulations mandate an advisory committee. To prescribe a particular mechanism might limit or discourage the use of other, and possibly more appropriate, means for ensuring community participation, coordination, and consultation. The precise means of implementing this principle stated in the Act and regulations should be determined locally. At the same time, the presence of a strong and viable element of community participation in each community education program will be important in the evaluation of an application.

(b) *Community Served.*

Comment. Several commenters suggested that the statement defining the community served be changed to read as follows: "The community shall include *but not be limited to* the attendance area for the regular instructional program of the school involved in administering and operating the program."

Response. A change is made. The regulations should not be overly restrictive in the definition of a community, therefore a change is made in § 163.4(b) (160c.4(b)). This change will make it clear that a community education program may serve an area larger than the immediate attendance area of the schools of the LEA involved in the program. For example, this might include the entire school district.

(c) *Community Center.*

Comment. One commenter suggested that public libraries be listed as eligible facilities. Another questioned the specific reference to recreation and park centers, since they are not specifically mentioned in the Act.

Response. The reference to recreation and park centers has been deleted. The Commissioner agrees that the inclusion of any specific group not designated in the Act might imply the exclusion of all other groups. The reason for any inclusions of groups is that they are specifically mentioned in the Act. It is not the intent of the Commissioner to eliminate particular groups from participation in, or facility from being used in any State or local community education effort. Rather, the Commissioner encourages the full participation of as many diverse groups and organizations and the use of a wide range of facilities as possible in community education programs.

Comment. One commenter expressed concern over the inclusion of satellite or mobile facilities as centers in § 163.4(c)(1)(ii) (160c.4(c)(1)(ii)).

Response. A change is made to clarify the use of other public facilities. This language is consistent with section 808(a)(6) of the Act which states that a community education program will provide for the identification and use of services outside the school "or other public facility". While a center should serve as a focal point for the community education program, community circumstances may create a need for additional facilities in addition to that center.

Comment. One commenter suggested that the phrase "to the extent feasible" be added to § 163.4(c)(2)(i) (160c.4(c)(2)(i)), since that phrase was used in the Act.

Response. A change is made. The phrase is added to the regulations.

Comment. One commenter expressed the opinion that § 163.4(c)(2)(ii) (160c.4(c)(2)(ii)) is of no benefit and questioned its inclusion in the regulations.

Response. A minor change is made. The Commissioner wishes to emphasize the importance of the school as a focal point in the community education program. This emphasis is based on Sec. 802(a) of the Act, and is illustrated through the regulations. The phrase "are merged with * * *" is deleted from this subsection because it can be seen as having a limiting effect. However, the remainder of the subsection is not changed.

(d) *Community needs.*

Comment. One commenter was concerned that the language of this section emphasized that all services must be provided, rather than attempting to meet local needs.

Response. No change is made. Section 163.4(d) (160c.4(d)) requires "systematic and effective procedures" for identifying, documenting, and responding, on a continuing basis, to the needs of a community. The Commissioner does not intend to designate specific services to be provided by all local programs, but establishes a procedure to assist local programs in determining their own needs, interests, and concerns. This is consistent with the Act's findings in Sec. 802(5) that community schools provide a great potential for the use of needs assessment as a basis for human resources policies.

(e) *Community resources.*

Comment. Several commenters wanted stronger language requiring cooperative agreements between the LEA and other public agencies. One suggested that the regulations mandate that program directors assist other agencies rather than replicate efforts of those agencies.

Response. A change is made. On August 6, 1979 Congress passed Pub. L. 96-46 that makes a technical amendment to Section 809(b) of the Community Education Act. The amendment reads as follows:

No grant may be made to a local educational agency to plan, direct or operate any program or activity that is being conducted by another public agency unless the Commissioner determines that cooperation exists between the local education agency and the public agency conducting such program or activity.

Though originally accepted as a part of the Act, this provision was inadvertently omitted from the final version of the Act. The technical amendment was therefore introduced into Congress in order to formally incorporate the provision into the Act.

Accordingly, a new paragraph has been added to § 163.4(e)(3) (160c.4(e)), to reflect this amendment.

Comment. One commenter questioned the use of the term cooperative "agreements" and suggested the term cooperative "arrangements" be substituted.

Response. A change is made. The word "arrangements" is more appropriate, since it allows for greater diversity of interagency cooperative networks. The language in § 163.4(c)(2) (160c.4(c)(2)) is changed to be consistent with the language of the Act.

Comment. One commenter questioned the use of the phrase "to avoid duplication of services" in § 163.4(e)(2) (160c.4(e)(2)) in relation to cooperation among public and private agencies.

Response. A change is made to encourage programs to avoid duplicating services to the extent feasible. It is not always possible to avoid some duplication of services when public and private agencies cooperate to provide community education services. At the same time, however, the intent of the program is to make the most efficient use of public buildings in providing a wide range of services to a wide variety of groups in a community. To effectively coordinate these services, duplication of services should be avoided.

Comment. One commenter requested that the phrase "or other public facility", used in the law, be added to § 163.4(e)(1) (160c.4(e)(1)).

Response. A change is made to conform § 163.4(e)(1) (160c.4(e)(1)) to the language and intent of the Act with respect to the utilization of community resources outside the school or other public facility. The language is added to § 163.4(e)(1) (160c.4(e)(1)).

Comment. One commenter requested that the phrase "to the fullest extent possible" be deleted from § 163.4(e)(1) (160c.4(e)(1), which provides for the identification and utilization of resources located outside the school to enhance the program.

Response. A change is made. The phase introduces confusion and uncertainty in measuring the identification that would constitute "fullest extent possible". To avoid varying and differing interpretations, the phrase is deleted.

Comment. One commenter questioned the use of the phrase "to enhance the size and quality of the program" in § 163.4(e)(1) (160c.4(e)(1)).

Response. No change is made. Section 808(a)(6) of the Act requires arrangements to make the maximum use of existing resources within the community. The Commissioner believes these arrangements can be "maximized" by increasing qualitative aspects of a program (number of services provided, number of agencies participating, etc.) or improving the quality of working arrangements (higher level of cooperative agreements, sharing of resources, coordination of activities, etc.). The intent is to provide the maximum latitude for local communities planning, establishing, expanding, or operating community education programs.

(f) *Program clients.*

Comment. One commenter wanted the regulation modified so that the community education program could specifically include exceptional children while a second commenter felt that there should be a statement prohibiting duplication of effort to mentally or physically handicapped children. Another commenter suggested that program clients should be expanded to include "women and girls with special educational needs, including, but not limited to single mothers, displaced homemakers, older women, and rural women." Another suggested the inclusion of the requirement: "Access shall include communicational access through the use of qualified spoken language and sign language interpreters".

Response. No change is made. The Commissioner encourages participation by these individuals and groups in a community education program. The regulations as currently written do not eliminate any of these groups. The Act provides that a community education program serve all age groups in the community. Only those groups specifically mentioned in the Act have been included in the regulations. The list of persons in § 163.4(f) (160c.4(f)) is illustrative and not exhaustive. Any program receiving Federal assistance under this Act must, of course, comply with the following statutes and regulations. These statutes prohibit in any Federally assisted activity discrimination based on (1) race, color, or national origin—Title VI of the Civil Rights Act of 1964 (42 CFR Part 80); (2) sex—Title IX of the Education Amendments of 1972 (45 CFR 86); (3) handicap—section 504 of the Rehabilitation Act of 1973 (45 CFR Part 84); and (4) age—The Age Discrimination Act of 1975 (45 CFR Part 90 "General Government-wide Age Discrimination Regulations").

(g) *Community involvement in governance.*

Comment. Several persons requested that the regulations emphasize more strongly the role of local citizens in the governance of the program. One commenter questioned why the regulations did not make a distinction between parents and other groups, why parent involvement in planning and developing the program is not reflected in the regulations, and why the regulations permit the involvement of students. Another suggested rewording the last sentence for clarity. Another commenter suggested that this section include specific provisions for measurable community involvement.

Response. The section is revised to incorporate the above mentioned concerns and to clarify Congressional intent. The revised section maintains the important role of citizen involvement in community education, provides for a greater involvement of parents of students, and clarifies areas of ambiquity. The revised section reflects more clearly the language and intent of the Act.

(a) The program shall be planned and operated in cooperation with the community to be served by the program, in order to fulfill the educational, recreational, health care, cultural and other related community and human services in accordance with the needs, interests and concerns of the community for individuals of the community; and

(b) Involvement shall include active and continuous involvement of (1) individuals, institutions, and groups representative of the community, on an advisory basis; and (2) parents of school children in the planning, development and implementation of programs.

Comment. Several commenters suggested the inclusion of specific citizens or official groups. One commenter wanted to specifically include teachers, another commenter wanted to include locally elected officials, while another suggested the section be expanded to include individuals and groups that represent women and miniorities, and public libraries. One commenter suggested that "local educational groups" be used instead of "community college".

Response. Section 163.4(g) (§ 160c.4(g)) is revised to require cooperation with the communuity

served in order to provide "educational, recreational, health care, cultural, and other related community and human services." The intent is to encourage the involvement of all of the above mentioned groups and at the same time give maximum opportunity for a local community to operate a program in accordance with the "needs, interests, and concerns of that community."

Section 163.5 (160c.5) How are the minimum elements of community education program applied?

Comment. One commenter expressed concern that this section does not allow funding for projects where progress is being made toward meeting the given minimum elements. Another suggested the elimination of the word "already" before the phrase "meet all the minimum elements". It was also mentioned that the language in this section is too broad and does not reflect the intent of the Act.

Response. No change is made. It is not the intent to prohibit funding projects that are progressing toward but have not yet achieved all the minimum elements. Section 163.5(a)(2) (§ 160c.5(b)(2)) of the regulations, which states that "Each community education program shall— * * * (2) Be able to meet all of the minimum elements with the assistance provided under the project", would allow funding of a project that was making progress toward meeting all seven elements. All seven elements do not have to be met when the project is funded, but the goals must include meeting all seven minimum elements before the project is completed.

Section 163.6 (160c.6) Scope of eligible project activities.

Comment. Several commenters supported this section of the regulation as written. Others supported the limits on the use of funds, but wanted to change the wording in the regulation to make this requirement even stronger. These commenters suggested that in the sentence "However, the project to which the Federal share is applied *may* include only the administrative and coordinating activities * * *", the word "may" be replaced with the word "shall". Another commenter supported the limitation, but suggested the inclusion of a provision to allow school districts in rural areas to use the Federal funds for other activities when no other funds are available.

There were additional commenters who opposed limiting the use of Federal funds. One commenter suggested that this limitation would kill the impetus for funding community education in the future. Another commenter suggested that the prohibition against the use of Federal funds for instructional materials and equipment is educationally unsound, and that there is no basis for it in the Act. Another commenter suggested that Federal funds should be used for maintenance and operations of school district buildings after school hours when they are used for community education program purposes.

One commenter questioned the legality of allowing only those activities listed in the regulations.

Response. The regulations are changed to allow projects to include costs beyond those described in the proposed regulations. Now, for example, costs directly related to the provision of program activities and services are allowed. However, the Commissioner believes that while a community education program may encompass virtually any type of educational or other social service, the Federal program was mainly intended to support the processes of organizing and coordinating these services. Therefore, funding of leadership, administrative, and coordinating activities is encouraged.

A major purpose of the legislation is to encourage the better use and coordination of existing resources. The purpose is not to displace other funding of recreational, cultural, or educational programs. It is assumed that the funding for those programmatic costs will continue to be met from other sources. The previous legislation stressed coordination of existing programs and resources and the results of such a funding philosophy have received considerable praise through the evaluation of the program and from various community education constituencies. The Commissioner emphasizes the importance of giving priority to using Federal funds under the Act to clearly establish the process (needs assessment, citizen involvement, etc.) rather than pay for programs (of adult education, recreation, child care, etc.). For further clarification, see response to § 163.1 (§ 160c.1).

Comment. One commenter suggested that § 163.7 (§ 160c.6(b)(2)) be clarified and expanded. Another commenter requested that this subsection be expanded to include: "Training for the administrator and appropriate members of staff and for the grantee's chief executive officer and appropriate members of staff". The same commenter suggested that § 163.7 (§ 160c.6(c)(8)) be amended to read "Organizing and training community education task forces or advisory councils * * *".

Response. These suggestions have been incorporated into the final regulations.

Comment. One commenter requested additional language to clarify § 163.7 (§ 160c.6(c)(12)) regarding how much flexibility LEA's will have to apply evaluation procedures in addition to those specified in the State plan.

Response. Section 163.7 (§ 160c.6(c)(12)) allows an LEA to contract with third party outside evaluators to evaluate the community education program assisted with Federal funds. Valid evaluations of programs funded under the Act will not only provide valuable information at the local level, but can produce important data to assess the impact of Federal involvement in community education. The regulations permit these evaluations. The responsibility of seeing that the evaluation is initiated and carried out is a local responsibility. The Commissioner encourages the greatest flexibility for LEAs to conduct the evaluations.

Comment. One commenter asked if Federal funds could be used for paid media advertising under § 163.7 (§ 160c.6(c)(3) and (5)).

Response. The Commissioner agrees that Federal funds could be used for activities that qualify as procedural activities necessary to providing services and activities or obtaining community participation in carrying out the program. Paid media advertising must be in accord with 45 CFR Part 74, Appendix C, Part II (B)(2).

Section 163.9 (160c.7) Non-Federal contribution for related Federal programs.

Comment. Several commenters supported this section as it was written. One commenter felt that the section could be supported only if there was coordination at the Federal level. Without this coordination the commenter felt that such a policy was worthless. This commenter also cited apparent conflict of this provision with 45 CFR Part 74, Subpart G, § 74.53(a)(1). Finally a few commenters expressed concern that the regulations were more restrictive than the Act and wished to change the term "cost" to "fair value" and "project" to "program".

Response. Minor changes are made in the final regulations. "Costs" and "product", used in the proposed regulations are changed to "fair value" and "program" respectively. These changes provide consistency between the Act and the regulations.

Section 806(a) of the Act provides authority for this section of the regulations. The language "Notwithstanding any other provision of law" eliminates any conflict with 45 CFR 74.53 that prohibits the use of funds

from other Federal grants to meet a cost sharing or matching requirement.

Although coordination between a community education program under this Act and those programs listed in Sec. 806 of the Act, is not required, the requirements set forth in Sec. 806(a)(1) and (2) would most likely lead to coordination of effort. Additionally, since two purposes of the program as stated in Sec. 802(b) of the Act are "(1) * * * collaboration with * * * related human services * * *" and "(2) * * * coordinate the delivery of social services * * *", coordination is emphasized in the final regulations (i.e. § 163.4).

Other comments

Comment. One commenter suggested that a portion of funds be earmarked for exceptional members of the population, i.e. the deaf and blind. Another commenter suggested that a special Indian set aside funding is necessary to achieve the permanent existence of community education programs. Another commenter questioned whether Native American groups are eligible to apply for funding under the current regulations. Finally a commenter suggested that a provision supporting the participation of postsecondary technical and professional education programs for deaf people be included in the regulations.

Response. No change is made. The General Education Provisions Act, Section 421(c)(2)(B) states generally that funds appropriated to carry out a particular program cannot be allotted, apportioned, allocated or otherwise distributed in any manner or by any method different from that specified in the law authorizing the appropriation. Therefore, funds cannot be earmarked for groups not provided for in the Act.

Comment. One commenter stated that the regulations were unclear as to whether an applicant is eligible for simultaneous grants. For example, could an LEA receive a grant under the program for grants to LEAs (Sec. 809 of the Act) and also under the program for grants to public agencies and nonprofit private organizations (Sec. 810 of the Act)?

Response. Applicants should not be eligible for simultaneous grants. Technically, an LEA could qualify as an applicant under both of these programs. However, it is very unlikely that the LEA would receive a grant under both programs simultaneously. With limited funds available, the intent is to spread the benefits of community education to as many areas and individuals as much as possible. In evaluating applications from LEA's under the LEA program, the Commissioner considers the avoidance of duplication of projects in § 163b.30(b)(2) (§ 160c.34(b)(2)) and the funding of a diversity of community education methods in § 163b.30(b)(3) (§ 160c.34(b)(3)). It is unlikely that this duplication could be avoided if one agency received grants for two different community education programs.

Subpart B—State Community Education Program

Section 163a.10 (160c.10) Purpose of State grants.

Comment. One commenter expressed concern that the regulations language is much stronger than the law and House report in emphasizing the limited Federal role. Another commenter expressed support for the regulations language.

Response. A minor change is made. SEAs have played a pivotal role in implementing the Community Schools Act of 1974. They should take the leadership role in building a natural base for continued community education growth. The Community Schools and Comprehensive Community Education Act was developed by Congress, in part, to increase the role that SEA's are to play in the future development of community education. By creating the State formula program with monies flowing to LEAs through States, Congress placed States in a central position. The decreasing Federal match over the five-year period of the Act, also places States in a position to assume the burden of continued growth. However, the regulations do not attempt to limit Federal support for community education to the five years of this Act. In order to emphasize the importance of SEA's, yet not eliminate the possibility of continued Federal support, the phrase "full State responsibility" has been changed to "major State responsibility" for development of community education during the five year period of authorization in the final regulations.

Section 163a.11 (160c.11) Eligible activities.

Comment. One commenter suggested that public agencies and private nonprofit organizations should also be eligible for funds distributed by an SEA in the State formula program.

Response. No change is made. Section 808(a)(3) of the Act provides that the SEA must distribute 80 percent of the funds it receives from its allotment among LEAs. The subgrantee is thus delineated in the Act. Other public agencies and private nonprofit organizations are not included in the Act and therefore are not included in the regulations. Section 808 of the Act states that "payments will be used to expand community education programs of the schools of local educational agencies within the State;". No particular form of administration will be required as long as the school is genuinely involved in the administration of the program. The school must be directly and substantially involved in the administration and operation of the program. The means by which this takes place will vary from school to school and program to program. However, a community education program in which the role of the school is confined solely to making its facilities available and in the administration or operation of which the school plays no genuine role is not a community education program within the meaning of the law.

Comment. One commenter recommended that the word "program" be used instead of community education "activities" in § 163a.11(a)(2) (§ 160c.11(a)(2)).

Response. A change is made to clarify the subsection.

Comment. One commenter suggested that language allowing funds to be used for conferences and dissemination be added in order to be consistent with language in the Act.

Response. The section is changed accordingly.

Comment. One commenter suggested that language be added to allow SEAs to contract with other agencies to perform training functions in all aspects of community education.

Response. No change is made. The Commissioner encourages SEAs to coordinate all activities with appropriate agencies within the State. Each State can best develop a plan to fit its own situation. In doing this it must determine its own training needs and assure appropriate activities to respond to these needs. This assumes maximum State initiative without Federal interference in State and local systems.

Section 163a.20 (160c.12) Documents a State must submit to receive a grant.

Comment. One commenter supported this section as it is written, while two others wanted stronger assurances of citizen involvement in the community education program.

Response. No change is made. (See response to § 163a.23 (§ 160c.15)).

Comment. One commenter suggested that State plans be required on a rotating basis, so that only one-third of them would be forthcoming to OE each year.

Response. No change is made. Section 808(a) of the law requires any State desiring to participate in the program to

submit a plan to the Commissioner. The regulations, in carrying out this Congressional intent, require States to submit State plans prior to receipt of Federal funds. Therefore, each State wishing to participate in the formula program must submit and have approved a State plan for community education development within the respective State. The Commissioner requires State plans prior to the first year of funding of the formula program for all States wishing to participate.

Section 163a.21 (160c.13) Assistance to community education programs.

Comment. One commenter felt that funding should include programs making progress toward meeting the minimum elements. This person also suggested that the regulations allow an SEA to conduct an assessment after, rather than before, receiving Federal funds.

Response. No change is made. As written, the regulations already include programs making progress toward meeting the minimum elements under § 163a.21(a) (§ 160c.13(a)). It is important that a community's needs be assessed before the receipt of Federal funds, since such an assessment is necessary in determining State and local involvement and resources available to effectuate that involvement.

Comment. One commenter recommended that SEAs and LEAs identified in § 163a.21(a) (§ 160c.13(a)) be specified by name and geographic location in the SEA proposal. Another commenter recommended that a State plan contain specific provisions beyond those identified in the regulations.

Response. No change is made. The regulations presently require that a State identify (1) existing and planned community education programs through out the State; (2) the locations with the strongest interests in and needs for new community education programs; and (3) resources available to plan, establish, expand, or operate community education programs throughout the State. To require additional provisions beyond those identified or based on the authorizing legislation would be inappropriate.

Section 163a.23 (160b.15) Expanding community education programs.

Comment. Several commenters expressed concern that the regulations should reflect a more comprehensive State plan than required in this section. These commenters recommended the regulations be strengthened by requiring States to involve citizens in the development of the State plan, develop procedures for continual advice and input, secure State board of education support, and develop and carry out State-level planning and interagency coordinating activities. Many suggested that the appendix be incorporated into this section.

Response. No change is made. Although the regulations are not as specific as many community educators had wished, the Commissioner requires SEAs to submit sufficient information necessary to determine that provisions of the Act are met. The Commissioner is aware that the principles of community education emphasize citizen involvement, cooperative use of public resources through interagency collaboration, assessment of needs that can serve as a basis for program plans. The Commissioner encourages these principles to be carried out by SEAs and has provided additional information in this regard in Appendix B. As administrator of the State program, the SEA must see that the minimum elements in § 163.4 (160c.4) are met in local, as well as the statewide programs. This assures cooperation with other agencies, community involvement, etc. The Commissioner is well aware that the SEAs will play a pivotal role in successful implementation of community education in the future.

Comment. One commenter questioned the inclusion of § 163a.23(b)(2)(ii) (§ 160c.15(b)(2)(ii)) and whether this section would result in expansion of the program.

Response. No change is made. The attempt has been made to provide the greatest flexibility to SEAs in determining the nature of "expanding" community education within the State. Expansion might be interpreted as developing new programs or providing increased services. It might also include increased numbers of individuals and groups participating in the planning and implementation of the program.

Comment. One commenter questioned the inclusion of § 163a.23(c)(1) (i) and (ii), (§ 160c.15(c)(1) (i) and (ii)), since these requirements are not directly stated in the law.

Response. No change is made. Section 808(a)(1) of the Act states that payments will be used to expand community education programs of the schools of LEAs within the State. The regulations require SEAs to conduct a statewide assessment in order to develop a program for expanding community education. The Commissioner believes that the statewide assessment may identify community education needs as well as resources available to meet those needs. Sections 163a.23(c)(i) and (ii), (§ 160c.15(c)(i) and (ii)), will enable an SEA to identify community education needs while § 163a.23(c)(iii) (§ 160c.15(c)(iii)), will allow SEAs to locate resources within the State.

Comment. One commenter wanted locally elected officials to be included in § 163a.23(b)(2)(ii) (§ 160c.15(b)(2)(ii)) which talks about "increasing the number of community organizations that participate in planning and implementing the programs and improving the quality of the participation." Another suggested that appropriate Indian tribes or their designees be included.

Response. No change is made. (See response to § 163.4(c) and (f) (§ 160c.4(c) and (f)).

Section 163a.24 (160c.16) Local distribution of funds.

Comment. One commenter suggested that § 163a.24(b)(2)(ii) (§ 160c.16(b)(2)(ii)) be deleted or changed to read "assistance to existing or proposed community education programs that meet or propose to meet the minimum elements. The same commenter suggested § 163a.24(b)(2)(iii) (§ 160c.16(b)(2)(iii)) be deleted. Another commenter questioned the inclusion of § 163a.24(b)(2) (§ 160c.16(b)(2)).

Response. No change is made. Section 808 of the Act requires among other things that the payments to LEAs under the State program be used to expand local programs, as well as establish and operate community education programs. Limited funds appropriated necessitate focusing on those programs of the highest quality to most effectively meet the community needs throughout the State.

Comment. One commenter suggested that the SEA should provide for quality approaches in granting funds to LEAs, and that because there will be insufficient funds at the SEA level to fund all programs, the regulations should establish a competitive program for distributing State formula Community Education funds. Another commenter wanted emphasis placed on demonstration type projects.

Response. No change is made. The strength of the community education concept and the magnitude of the results achieved have been due to the intense interest and support which is generated at the local level. Therefore, States should have the option of selecting those local programs where genuine commitment and possibility for success are demonstrated through a competitive process. Accordingly, regulations have been developed that allow each State to determine its own procedure for distributing funds, consistent with its own situation. By virtue of their authority over and proximity to LEAs, States are best suited to provide direct

assistance in the planning, initiation, and development of local community education programs. State funds to LEAs should be utilized for the purposes of planning and initiating programs on a broad scale basis throughout the State. States must assume a primary role as the direct link to local community education programs. The Commissioner feels that which programs are assisted, and how such assistance is carried out, should, within the parameters of the Act itself and its regulations, be left to the discretion of each State.

Comment. One commenter asked what provisions and/or alternatives are available if an identified LEA chose not to accept budgeted funds.

Response. The State would have the discretion under (§ 163a.24(a) § 160c.16(a)) to choose another LEA. This would likely be one of "procedures for distribution" which must be included in the State plan.

Section 163a.25 (160c.17) Evaluation procedures.

Comment. One commenter wanted to delete "if possible" from clause (a)(2) so that SEA's had clear responsibility to evaluate LEA projects even if the LEA received direct Federal support. However, a few commenters were opposed to SEA evaluation of Federally funded LEA projects and felt that this paragraph should be deleted.

Response. No change is made. Section 808(a)(11) of the Act requires that a State plan "provide satisfactory assurance that effective procedures will be adopted to evaluate the effectiveness of the community education programs assisted under this title (including where possible payments made directly under § 809)." These regulations adequately reflect the requirements of the Act as written. There is no requirement that SEAs actually evaluate LEA projects.

Comment. One commenter requested that additional reciprocal responsibilities be required between SEA projects and USOE "direct funded" projects.

Response. No change is made. As presently written, the regulations are designed so that each funding category is complete within itself, yet reinforces and is supported by other categories. For example, the minimum elements outlined in the regulations require coordination of agency and citizen involvement. The State Community Education Program, emphasizes assessing the needs of local communities prior to the development of the State plan and provides for State review and comment on LEA discretionary programs. Likewise, LEA's can receive State developmental and technical assistance provided through the SEA.

Section 163a.26 (160c.18) Other State plan provisions.

Comment. Several comments were received concerning § 163a.26(b) (§ 160c.18(b)) regarding the use of the funds remaining in the State's allotment (5 percent) after 80 percent has been subgranted to locals and 15 percent has been used for administration and technical assistance. One commenter was concerned that the remaining five percent of the funds might get lost in the State bureaucracy and consequently its intent also lost. Another commenter suggested that the five percent should be used to "train and provide technical assistance to LEA personnel in the creation, implementation, and administration of community education activities." This commenter also felt that teachers should be included in the definition of LEA personnel. One commenter questioned the justification for using funds for State activities.

Another commenter suggested that the five percent be used to train SEA personnel, with the balance used to train LEA personnel. One commenter wanted to use the five percent for cost over-runs and contingencies and not for technical assistance to SEA personnel.

Finally, a few commenters suggested that the remaining five percent of the funds be used to provide training, travel and other support for State advisory councils or committees.

Response. Section 163a.26(b) (§ 160c.18(b)) is revised. The Commissioner agrees that the NPRM limited the potential use of the five percent remaining funds. Therefore, the subsection has been revised to include training and technical assistance to other State agencies and State community education advisory committees.

Section 163a.27 (160c.19) Ten-year plan.

Comment. Several commenters suggested that the ten-year plan would create difficulties and place a burden on State education agencies.

Although one commenter said that the ten-year plan is a strong aspect of the regulations, there were a few commenters who stated that ten years were too long and recommended changing to a five year plan. Another commenter stated that the Community Education program should be aware that a ten-year period is too long, and that requiring SEA's to develop such long range plans will cause a number of problems.

Response. A change is made. Section 808(a)(2) of the Act mandates States to develop the ten-year plan. This ten-year plan for coordination will require each SEA to carefully plan future growth of community education as it relates to other agencies within the State. Section 160c.19(a) (1), (2), (3), and (4) of the draft regulations have been deleted from § 163a.27 of the final regulations. This gives greater flexibility to the State to provide for coordination that best fits its needs. Additionally, § 163a.27(c) (§ 160c.19(c)) provides for a two-year period for the development of the ten-year plan. It is hoped that the two-year development period will result in quality coordination efforts.

Comment. A few commenters felt that the regulations were not specific enough in detailing which agencies should be included in the ten-year plan. One commenter suggested language mandatory participation of teachers in the development of the plan. Another commenter suggested including libraries in the development and carrying out of the plan. Another commenter suggested that the language of the regulations should be changed to make it clear that LEA's should be included in the development of the ten-year plan. One commenter suggested that Indian tribal governments or their designees be included. Another commenter emphasized the importance of involving and coordinating with existing recreation agencies. Finally, one commenter wanted the input of locally elected officials added to this section of the regulations.

Response. No change is made. The Commissioner encourages the participation of all the above groups in the development of ten-year plans for coordination. The regulations do not exclude any group from participating; rather they encourage States to consult with all appropriate State agencies. The Commissioner suggests that States involve LEA groups as well. Again, certain groups have been mentioned, i.e., State and local recreation authorities and associations, because they are specifically referred to in the Act. However, the Act suggests, but does not limit involvement to these groups. It is left to the State to involve those groups best suited to meet the needs of the State in community education.

Comment. One commenter suggested this section be amended to provide that "two years after" refers to the beginning of the grant period, not to its conclusion.

Response. No change is made. The regulations state that the ten-year plan "must be completed no later than two years after the State receives its first

grant" under the formula program. The two-year period from the time a State begins operating under the formula program should allow for the development of quality plans. The formulation of the ten-year plan will provide a State with a long range schedule for coordination.

Comment. One commenter questioned whether an update or revision of the ten year plan is required with each three year plan and if this up-date would add another three years to the ten-year plan.

Response. No change is made. The regulations do not require an up-date in succeeding three-year plans nor do they require additional years to be added to the original ten-year planning period. However, the Commissioner has provided additional guidance and direction in Section 10 of Appendix B.

Comment. One commenter questioned the amount of detail in the ten-year plan in the regulations, when there is no such detail in the Act. One commenter felt that the meaning of § 163a.27(a)(3) (§ 160c.19(a)(3)) was not clear. Another commenter questioned the meaning of § 163a.27(a)(4) (§ 160c.19(a)(4)).

Response. A change is made. The Commissioner anticipated that a large number of questions would result from the Congressional mandate that the States develop a ten-year plan. Examples of different types of coordination that a State education agency might undertake are deleted, since they do not represent all of the possibilities.

Comment. One commenter questioned the justification for the particular timetable in § 163a.27(c) (§ 160c.19(c)), since none is given in the law.

Response. No change is made. The two-year time period was developed to give State educational agencies additional time to create quality plans. The two-year timeline is considered to be more realistic than requiring the plan at the same time the three-year State plan is submitted to USOE for consideration.

Subpart C—Grants to Local Educational Agencies

Section 163b.10 (160c.30) Eligible projects.

Comment. One commenter asked if a junior or community college could apply as an LEA. Another commenter suggested that community colleges be permitted to apply as LEAs. One commenter suggested that public municipal recreation departments be eligible. One commenter felt public libraries should be included. Another asked if a residential school for the deaf and blind could qualify as an LEA.

Response. No change is made. Refer to the response to § 163.4(a) (§ 160c.4(a)), Role of local educational agency (school).

Section 163b.11 (160c.31) Purpose of projects.

Comment. One commenter suggested that the regulations allow SEAs to award funds to programs directed by agencies other than LEAs.

Response. No change is made. Regulations governing SEA formula grants to local agencies appear in the State Community Education Program. Please refer to the response to § 163a.11 (§ 160c.11), Eligible Activities.

Comment. One commenter questioned the rationale for going beyond showing "reasonable promise of success", as stated in the Act, by requiring funding of programs with national impact.

Response. No change is made. Clarification is provided in the response to comments under § 163b.30 (§160c.34).

Section 163b.21 (160c.33) State review of local educational agency applications.

Comment. A few commenters expressed support for State review of LEA applications. One commenter questioned why this section was included in the regulations, when SEA review is not required by the Act.

Response. No change is made. Among the primary purposes of the Community Schools and Comprehensive Community Education Act are (1) the promotion of coordination and better uses of facilities and resources, and (2) the promotion of a greater role for State education agencies in community education. It would therefore be counterproductive to not allow States to review LEA applications in relation to their own State plans for community education development. State review also gives States an opportunity to identify interested LEAs and to provide technical assistance to those desiring it. This review provides the SEA a mechanism for better overall coordination of community education under its own State program, rather than a veto power over local programs.

Comment. One commenter suggested that the SEA review of LEA applications should be strengthened by requiring the SEA to assign points to each LEA application. A second commenter stated that the time an SEA can review an LEA application should be limited to 45 days. A few commenters suggested that SEA comments be made in the context of LEA compatibility with SEA practices, guidelines, and the State plan. One commenter suggested that an SEA's comments should not have a negative effect on an LEA application, unless the SEA shows that the LEA proposal dramatically varies from the State plan and funding the LEA would have a deleterious effect on implementation of the State plan.

Response. No change is made. The Education Division General Administrative Regulations (EDGAR) govern the procedure for SEA review of LEA applications. These provisions are referenced in the final regulations. The State's views will be given full consideration by the Commissioner in reviewing applications in accordance with the requirements and criteria in these regulations. The SEA is not given a veto authority with respect to LEA applications by the statute, but its comments will serve to advise the Commissioner in reviewing applications under these regulations.

Comment. One commenter suggested the following addition to § 163b.21(a) (§ 160c.33(a)): "For LEAs with 10 percent or more enrolled Indian students, appropriate tribal governments or their designee have been given an opportunity to review and comment on such applications."

Response. No change is made. No group shall be given priority in the regulations. The overall purpose of the Act as stated in Section 882 is the provision of community education services in accordance with the needs, interests, and concerns of the residents of the community involved. This statutory purpose provides all interested groups an opportunity to provide input into a program.

Section 163b.30 (160c.34) How the Commissioner judges applications from local educational agencies.

Comment. One commenter suggested that ranking an LEA's proposal in terms of its capability of promoting community education nationally is an undue burden on the LEA. This commenter felt that projects holding "reasonable promise of success" would likely have a national impact. Therefore, LEA proposals should address local needs rather than concentrate on national impact. Another commenter questioned the rationale for this particular criteria.

Response. A change is made. To clarify the intent, the phrase "through exemplary approaches, methods, or information" is added. By emphasizing "national impact," the regulations concentrate on those projects that hold promise of success in the local community, and which have relevance to a national audience. Those programs which are relevant may then be replicated by other projects throughout the country.

The Federal effort in community education in terms of dollars has been a small experimental program. Such a program makes little sense unless it revolves around a strategy which produces significant national impact. Congress cannot justify Federal expenditures of funds on limited discretionary programs, unless these programs are exemplary in nature. Then, approaches used in these programs can be viewed in terms of their validity and in terms of an ongoing Federal role in their development. Congress, in funding the Community Schools Act of 1974 as well as the present legislation, provided resources in order to test this concept, and to distinguish the possible role of the Federal government from the roles of States, local governments, and other entities. Agencies have a responsibility to Congress to determine how this can best be done with limited funding and staff and in an almost unlimited field.

Some of the Federal dollars have been used to develop local community education models for future use and reference. Other Federal funds have been utilized to support the development of SEA community education capacity. Such an approach has proven to be the best way to achieve nationwide impact with limited dollars in a short time. The purpose is not an assumption of total Federal responsibility for community education at any level.

Comment. One commenter suggested that the phrase "to the extent possible" in § 163b.30(d) (§ 160c.34(b)(1)) is ambiguous and would make execution of the program more difficult.

Response. The suggested deletion is made.

Comment. One commenter suggested changing the wording in § 163b.30(d) (§ 160c.34(b)(2)) to read, "Avoidance of refunding of projects supporting the development and testing of strategies and methodolgies that have been previously demonstrated successful.

Response. A change is made. Section 163b.30(d) (§ 160c.34(b)(2)) has been reworded based on the above suggestion.

Comment. One commenter recommended striking § 163b.30(d) (§ 160c.34(c)), due to the current limited appropriation for the LEA program.

Response. The suggested change is made. Because of anticipated limited funding and considering the overall intent of funding discretionary programs, the Commissioner agrees with the point that it is unlikely that the program under this subsection could be carried out without seriously diminishing the overall impact of the program.

Section 163b.31 (160c.35) Criteria for evaluating applications.

Comment. Several commenters were concerned with the use of the word "new" throughout this section. In particular, these commenters were concerned that this meant only new projects as opposed to existing but innovative or exemplary projects. It was recommended by all these commenters that "new" be changed to "innovative" or "exemplary".

Response. A change has been made in those sections containing the phrase "develops new methods". The terms "exemplary" and/or "innovative" are used in this section and other sections of the regulations to replace the word "new".

Comment. One commenter wanted teacher involvement in the planning and implementation of the community education project to be included in § 163b.31(d) (§ 160c.35(b)(1)). Another commenter wanted to add locally elected officials to the criteria, in § 163b.31(d) (§ 160c.35(b)(3)).

One commenter wanted to add minority populations, handicapped and other disenfranchised group representation to the criteria for judging the application for funding.

Response. No change is made. See response to comments under § 163.4 (c) and (f) § 163a.27 (§§ 160c.4 (c) and (f) and 160c.19).

Comment. One person suggested that the word "integration" be deleted from § 163b.31(f)(1)(ii) (§ 160c.35(b)(1)(ii)), since this might exclude participation by public agencies other than public schools.

Response. The change is made. However, any agency qualifying under the definition of "local educational agency" as detailed in the response to § 163.4(a) (§ 160c.4(a)) (Role of local educational agency), must be "directly and substantially" involved in the project. Further, Section 802(1) of the Act states that "the school is an integral part of the local human service delivery system". A grantee is encouraged to make community education programs an integral part of its delivery system.

Comment. One commenter wanted clarification of (§ 163b.31 (§ 160c.35) regarding the relationship of advisory committees and local boards of education. Another commenter questioned the necessity for so much detail on the issue of citizen involvement, when such detail is lacking in the statute.

Response. No change is made. The presence of a strong element of community participation in each program and in the development of the project is emphasized in the regulations, specifically in the minimum elements in § 163.4(g) (§ 160c.4(g)), and will be important in the evaluation of any application. However, community participation must be on an advisory basis, since ultimate responsibility for the operation of a program or project must be in the administering agency.

Comment. One commenter perceived an over emphasis on innovation and replication in the criteria. Another commenter, agreeing with the need to differentiate purposes of LEA direct grants and LEA formula grants, wanted further clarification on the differences in these two LEA grant areas.

Response. No change is made. However, some clarification is appropriate:

The State formula program provides funds through SEAs to LEAs to expand community education by initiating new programs or increasing the scope of existing programs. Sections 163b.10 through .36 (§§ 160c.30 through .37) cover the provision of grants to LEAs to plan, establish, expand and operate community education programs.

By virtue of their authority over and proximity to LEAs, SEAs are best suited to provide a direct linkage between national and local community education efforts. All of this presumes that SEAs have a strong and pervasive leadership relationship with local community education programs, significant administrative roles and support within the SEA itself and with other agencies. The Act gives States the responsibility of making grants to local districts. It is emphasized that State funds to LEAs be utilized for the purposes of planning and initiating programs on a broad scale basis throughout the State, to provide on-going, long-term maintenance for community education, and basic development and support work. On the other hand, Federal funds should be used to support exceptionally strong projects. These projects then can be the sites for a variety of activities including dissemination of information and training.

Comment. One commenter questioned why outside evaluators are required for the LEA program, when they are not required in the law.

Response. The phrase is deleted from the final regulations. § 163b.12, § 163c.14, § 163d.13 (§§ 160c.37, 160c.48, 160c.66) *Project period.*

Comment. Several commenters stated that one year funding for a Community Education project is too short, and that a minimum of two years should be considered for community education project funding. One commenter wanted a five year maximum while another

wanted a three year maximum. Some felt annual review was necessary and others wanted two years or more of funding guaranteed when the application was approved. Another commenter questioned why the regulations limit grants to two years.

Response. It is anticipated that the Community Education Program will fund primarily 12 month project grants, since this allows funding of more projects with limited funds. Projects may apply for competitive renewal.

Comment. One commenter suggested that the Commissioner delegate the task of selecting appropriate LEA projects for funding to a State liaison officer who would have more knowledge about local capabilities.

Response. No change is made. Section 809 of the Act authorizes the Commissioner to make grants to LEAs. It is the Commissioner's responsibility under the Act to select projects for funding. Delegating this responsibility to a State liaison officer is not authorized.

Comment. One commenter felt that State directors should be allowed to award funds to exemplary community education programs.

Response. No change is made. Each State must develop a plan for utilization of State monies under the State Community Education Program Funds in the Program for grants to LEAs apply to those discretionary monies flowing directly from the Office of Education Community Education Program to LEAs. For information regarding State formula grants, consult comments and responses under the State Program of this appendix.

Comment. One commenter questioned why the regulations did not refer to the list of eligible activities in Sec. 807 of the Act.

Response. Section 163.6 of the final regulations is revised to include activities listed in section 807 of the Act. This listing provides greater clarity and understanding to the regulations.

Comment. One commenter requested that the Kildee Amendment be incorporated into the regulations.

Response. A provision is added to the minimum elements § 163.4(e) to insure that cooperation exists between an LEA and other public agencies conducting programs or activities similar to those planned, directed, or operated by the LEA.

Subpart D—Grants to Public Agencies and Nonprofit Private Organizations

Section 163c.10 (160c.40) Eligible applicants.

Comment. One commenter was concerned that "nonprofit private organization" was not defined clearly enough. In particular, that individual wanted to know if churches are eligible for funding under this category. Another wanted to know if LEAs are eligible to apply under the public agency and nonprofit private organization category. Another commenter requested clarity by the way of examples of agencies and organizations eligible for funding.

Response. A change is made. EDGAR Part 100c provides clear definitions for these terms. It defines: (1) *"Public"* as applied to an agency, organization, or institution, to mean that the agency, organization, or institution is under the administrative supervision or control of a government other than the Federal government; (2) "Nonprofit" as applied to an agency, organization, or institution, to mean that it is owned and operated by one or more corporations as associations whose net earnings do not benefit, and cannot lawfully benefit, any private shareholder or entity; (3) "Nonpublic" as applied to elementary or secondary school to mean nonprofit elementary or secondary school that is operated or controlled by an organization that is not a public agency; and (4) "Private" as applied to an agency, organization, or institution, to mean that it is not under public supervision or control.

These terms are added to the EDGAR references in § 163.3(a) (§ 160c.3(a)). A church is not eligible for funding under this category since this would violate the establishment clause of the First Amendment. An LEA could qualify as a public agency under the program for grants to public agencies.

Comment. Several commenters felt that SEA's should be included in this category under the program for grants to Public Agencies and Nonprofit Private Agencies and hence be eligible for funding. There was one commenter who objected to inclusion of SEAs in this category, and one who felt that if SEAs were included, equal opportunity for grants should be given to public agencies and nonprofit private organizations. One commenter suggested that only those public agencies and nonprofit private organizations not already provided for in the other categories of funding be eligible to apply under this category. Two commenters expressed concern about double funding of SEA's. They were particularly concerned that with the money from the State formula distribution the SEA would have more staff time to devote to preparing a good proposal, thus making competition difficult for public agencies and nonprofit private organizations. Others questioned the reason for separating SEAs out and treating them differently than other public agencies and nonprofit private organizations.

Response. No change is made. These comments are closely related to comments on § 163c.11 (160c.41). Refer to the response to those comments for clarification.

Comment. One commenter questioned need for § 163c.11(b)(2) (§ 160c.40(b)(2)). The same commenter requested information as to why duplication is judged on the basis of the type of grantee rather than nature of the project.

Response. No change is made. The basis for determining the use of a contract or a grant is set out in the Federal Grant and Cooperative Agreement Act of 1977 (Pub. L. 95–224). That Act requires a Federal agency to use a grant, procurement contract, or cooperative agreement, depending on the relationship between the Federal government and the recipient. In the case of contracts and grants, if the relationship is one where the principal purpose is to acquire property or services for the direct benefit of the government, a procurement contract must be used. However, if the principal purpose is one of support or stimulation authorized by the statute, a grant must be used. Activities that would, for example, directly benefit the government would be carried out by contract and not by grant.

Further discussion regarding this comment is found in the first response on § 163c.12.

Section 163c.11 (160c.40) What kinds of projects does the Commissioner assist?

Comment. One commenter wanted the regulations revised to allow for the use of a wider variety of buildings, including those other than school buildings.

Response. No change is made. The minimum element in § 163.4(e)(1)(i) (§ 160c.4(e)(1)(i)) allows for community colleges, junior colleges, recreation, or park centers to serve as a community center; § 163.4(c)(1)(ii) (§ 160c.4(c)(i)(ii)) includes satellite centers; and § 163.4(e)(i) (§ 160c.4(e)(i)) includes "other public facilities" in addition to schools. This broad range of facilities should meet the commenter's concern.

Section 163c.12 (160c.41) State educational agency projects.

Comment. Several commenters expressed support for allowing SEAs to receive funds under the program for Grants to Public Agencies and Nonprofit Private Organizations. One commenter questioned the inclusion of § 163c.12(b) (160c.41(b)). Another approved the

inclusion of the subsection, provided programs receiving Federal assistance are required to avail themselves of SEA assistance. Another commenter stated that SEA's should provide assistance to all community education programs, and not just to those that receive Federal funding.

Response. No change is made. SEAs have played a pivotal role in implementing the Community Schools Act of 1974. They have taken the leadership role in building a natural base for continued community education growth. The Community Schools Act has assisted States to develop a capacity to carry on after the withdrawal of Federal support. This modest Federal investment in a large number of States has provided a mechanism to assist LEAs and active State leadership in implementing community education nationwide.

Given the possibility that the State formula program may not be funded, an avenue is provided to preserve the SEA role in community education by funding SEAs as a separate category in the program for public agencies and nonprofit private organizations. Not to include SEAs would destroy the previous Federal investment. To group SEAs with all other public agencies would undermine any strategy to build SEA capacity. The language of Sec. 810 of the Act is broad enough to cover the funding of specific public agencies, including SEAs. This approach is consistent with the broader Congressional intent in enacting the Community Schools and Comprehensive Community Education Act of 1978. That intent is that SEAs play a larger, not a smaller, role in the Community Education Program. Indeed, the very purpose of the State formula program in Sec. 808 is to recognize the critical role of SEA leadership in community education and to make the SEAs increasingly responsible for community education in their States. Not to maintain a role for SEAs would cause a hiatus in State leadership activities that have been achieved under the program up to this point and impair the States' ability to undertake their responsibilities under the State formula program if it is funded in the future. Provisions in the regulations providing for the reservation of funds to support State technical assistance projects is consistent with overall congressional intent in creating the Community Schools and Comprehensive Community Education Act of 1978.

This does not mean that all funds under this program would necessarily be restricted to any one category. The regulations allow for annually establishing priorities among areas or reserving funds for them in a notice inviting applications.

Comment. One commenter inquired if SEAs can use § 163c.12 (§ 160c.41) monies for flow-through grants to LEAs as well as for general assistance.

Response. No change is made. These SEA funds are for SEA use and not intended for subgrants.

Section 163c.13 (160c.42) Nature of projects for other public agencies and non profit private organizations.

Comment. One commenter questioned why § 163c.13(b) (160c.42(b)) requires programs of national significance. Another strongly supported the "national significance" thrust in the regulations. Two other commenters were also concerned about the meaning of "national significance" and the fact that what is new in one area, may be standard practice in another, yet the first area may need the Federal funds to get a community education project off the ground.

Response. No change is made. Because of the newness of community education, the different funding categories under the Act, and the anticipated limited funding, the regulations continue to focus on projects that can have maximum impact on the nationwide development of community education.

"National in scope" means projects that may be of national significance, not necessarily projects that are national in coverage. This section does not exclude local models. A project may be national in scope or involve an approach that may be replicated by other national, State, or local agencies and organizations.

Comment. One commenter suggested that the language in § 163c.13(a) (§ 160c.42(a)) be added to the language describing eligible applicants in § 163c.10 (§ 160c.40) and that the language in § 163c.10 (§ 160c.40(a)) concerning types of projects eligible for funding be added to the criteria in § 163c.13 (§ 160c.42).

Response. No change is made. These two sections of the regulations should not be read in isolation, but considered in relation to the other sections of the regulations. An applicant must be aware of the requirements in §§ 163c.10 through 163c.13 (§§ 160c.40 and 160c.42), as well as other sections of the regulations, prior to developing a proposal for funding.

Comment. One commenter suggested that elected officials be specifically named in § 163c.13(a)(1) (§ 160c.42(a)(1)).

Response. No change is made. Please refer to response to comment in §§ 163.4(c), (f) and 163a.27 (§§ 160c.4(c), (f) and 160c.19).

Comment. Two commenters expressed concern regarding coordination between LEAs and other public agencies and nonprofit private organizations. One of these commenters suggested that public agencies and nonprofit private organizations be mandated to work cooperatively with the U.S. Office of Education, the SEA, and appropriate LEAs.

Response. No change is made. Coordination among relevant agencies is required in the regulations, including provisions aimed at preventing duplication of services. See §§ 163.1(b) (2) and (5); 163.4(3), (f), and (g) (§§ 160c.1(b) (2) and (5); 160c.4(3), (f), and (g)).

Comment. One commenter inquired as to the reason for including the requirements in § 163c.13(d) (§ 160c.42(c)).

Response. No change is made. Section 802(b) of the Act states that one of the purposes of the legislation is to provide for a research and development emphasis in community education which can contribute to an improved formulation of Federal, State, and local policy. The present legislation also requires evaluation and assessment of the community education program efforts. In order to meet these purposes, it is important that the Commissioner be able to show results of program efforts. The Commissioner considers evaluation and dissemination to be as important as the actual development of projects. A primary intent is to make program results accountable, understandable, and available to the Office of Education and the public as well as to the Congress. Program results will become a basis for research findings regarding the community education processes that have proven to have the greatest potential for success.

Comment. One commenter stated that the list of authorized activities in § 163c.13(c) (§ 160c.42(d)) appears narrower in scope than the law. Another felt that funding priority should be given to local projects that have potential for national significance.

Response. Grantees from national, regional, State, and local levels are eligible. The regulations do not restrict participation to a narrow clientele, nor have they restricted types of activities that can be carried out by that clientele beyond the authority of the Act.

Comment. A few commenters stated that SEA's should have the opportunity to review applications from public agencies and nonprofit private

organizations just as they are afforded the opportunity to review LEA applications under the LEA program.

Response. No change is made. Certain problems arise if SEAs review and comment on these applications, since SEAs as potential grantees under the program for public agencies and nonprofit private organizations would be reviewing other potential grantees in the same program.

Comment. One commenter inquired as to why the regulations do not refer to Sec. 807 of the Act.

Response. The regulations have been revised to incorporate the list of programs in Sec. 807 of the Act. This list has been added to § 163.6 (Scope of eligible project activities) of the regulations.

Section 163c.31 (160c.45) Criteria for evaluating applications from State educational agencies.

Comment. One commenter questioned the appropriateness of these criteria and specifically questioned why SEAs are eligible under this program in light of similar activities in the State formula program.

Response. No change is made. This comment is directly related to similar comments made in relation to §§ 163c.10 and 163c.12 (§§ 160c.40 and 160c.41), concerning inclusion of SEAs within the public agencies and nonprofit private organizations. Please see responses to comments under § 163c.12 (§ 160c.41).

Comment. One commenter felt that the words "has planned for" should be inserted after "has developed" in § 163c.31(f) (§ 160c.45(b)). The commenter felt that grants to increase SEA capacity should not require the SEA to have all elements in place at the time the proposal is submitted.

Response. No change is made. The regulations provide grants to SEAs in this program to carry out State level planning and interagency coordination of activities and statewide dissemination activities and to provide support to one or more specific community education program. The regulations require only that an assessment of State-level organizations and resources be made, and a series of planning activities be prepared prior to presentation of an application to the Office of Education. Sufficient information is required to be able to judge program content and purpose.

Comment. One commenter stated that § 163c.31(g)(2)(i) (§ 160c.45(c)(2)(i)) is not clear. Another person recommended that this section be revised to read "assisting LEAs to meet all the minimum elements". Two commenters felt that more emphasis should be devoted to helping LEA's develop community education plans to meet the minimum standards.

Response. A change is made in accordance with the above comments. Refer to § 163c.31(g)(2)(i) (§ 160c.45(c)(2)(i)) in the final regulations.

Comment. One commenter suggested that § 163c.31(g)(2)(iii) (§ 160c.45(c)(2)(ii)) be made stronger by requiring LEAs to seek involvement and assistance from SEAs at the outset of application development.

Response. No change is made. The criteria in § 163c.31 (§ 160c.45) govern activities conducted by SEAs. Therefore, it is inappropriate that the Commissioner regulate LEAs in this section. All LEAs are encouraged to avail themselves of the assistance provided by SEAs as soon as possible and to assist SEAs in developing and carrying out a State plan for community education development.

Section 163c.32 (160c.46) Criteria for evaluating applications from other public agencies and nonprofit private organizations.

Comment. One commenter wanted the word "client" in § 163c.32(f) (§ 160c.46(b)) replaced with "initiators, administrators, and sponsors of community education projects."

Response. No change is made. The Commissioner agrees that "clients" may include initiators, administrators, and/or sponsors of community education projects, but has chosen to use a broader term that might include any individual or group involved in designing and operating a project.

Comment. Two commenters were concerned that § 163c.32(f) (160c.46(b)) does not reflect the specific requirement of Sec. 810 that nonprofit groups must enter into contractual or other suitable forms of agreement with the LEA concerned. Another commenter recommended that a public agency and nonprofit private organization be required to sign a cooperative agreement with the LEA in its service area.

Response. A change is made. New language is added to § 163c.32(f)(2) (§ 160c.46(b)(2)) to reflect this concern.

Comment. One commenter wanted to add language requiring citizen involvement and agency coordination.

Response. No change is made. As written, the criteria reflect a need for participation by clients who would be involved in the project and by appropriate agencies §§ 163c.32(f), 163c.32(g) (1) and (3) (§§ 160c.46(b), 160c.46(c) (1) and (3)) require involvement of one of these two groups. Additionally, the minimum elements require that all local programs include identification and utilization of community resources and interagency cooperative arrangements (§ 163.4(e)) and community involvement (§ 163.4(g)).

Subpart E—Training Grants to Institutions of Higher Education

Section 163d.10 (160c.60) Eligible applicants.

Comment. One commenter questioned the inclusion of "short term". Another commenter questioned why training is short term in nature.

Response. A change is made. The phrase "short term" has been deleted. However, the regulations focus on training in order to use the limited funds available to train the maximum number of people to have the greatest impact upon community education programs within the authorized life of the Community Schools and Comprehensive Community Education Act. Since private funds now support approximately 80 centers for community education which currently provide full-time degree training, Federal funds should not be utilized to supplant existing programs or duplicate the same training opportunities that they provide. Training should be offered at such times and in such a manner as to allow participation by those persons who are in fulltime positions yet need new skills, or retraining in community education. This type of training can be carried out with a minimum disruption to work responsibilities.

Comment. One commenter wanted to know if IHE/LEA consortia are eligible under this category.

Response. No change is made. The regulations reflect the statutory requirement for training grants; recipients must be institutions of higher education. However, an IHE and an LEA could enter into a cooperative arrangement or consortium to apply for a project. The requirements governing groups of applicants are set out in §§ 100a.127–100a.129 of EDGAR. The IHE must, under Section 812 of the Act, be the lead or administration agency of the group. In other words, the IHE must remain primarily responsible for the project.

Section 163d.11 (160c.61) Types of projects.

Comment. One commenter pointed out that the regulations make no attempt to require applicants to consult with publishers as required under Sec. 426 of the General Education Provisions Act (GEPA). This section requires consultation with publishers in projects

that involve the development of curricula or instructional materials.

Response. No change is made. However, since this requirement as part of section 426 of GEPA applies to all Office of Education programs it will be included in EDGAR which will be soon published in final in the Federal Register. The Community Education Program is subject to EDGAR.

Section 163d.12 (160c.62) Training activities.

Comment. One commenter suggested that § 163d.12 (§ 160c.62) should be expanded to include training to improve leadership and administrative skills necessary to supervise and coordinate programs and to provide training and development of community leaders from among participants on local advisory councils. Another commenter recommended that training include "the training of individuals to work with public institutions and the training of public institutions to work with individuals within the context of the act".

Response. Appropriate changes are made in § 163d.12 (§ 160c.62) of the regulations.

Comment. Several commenters supported this section of the regulations as written. One commenter felt more emphasis needs to be devoted to training LEA personnel. Another expressed an opinion that this section should not limit proposals to those listed.

Response. A change is made. In developing § 163d.12 (§ 160c.62) of the regulations (Training activities) the primary concern was that the potential of this training category not be limited. Section 160c.62(a) of the draft regulations has been deleted from § 163d.12 of the final regulations. That section provides for a great diversity of training areas and of flexibility concerning the kind of information conveyed. Training is not geared to a specific audience; it does not eliminate particular groups. It is designed to fulfill the congressional mandate and provide general parameters to meet current training needs in community education.

Comment. One commenter pointed out that § 163d.12(c) (§ 160c.62(b)(3)) leaves out the legal requirement that institutions of higher education should show evidence of working with State and local educational agencies.

Response. A change is made. The final regulations reflect this requirement in Sec. 812(b)(2) of the Act.

Section 163d.31 (§ 160c.65) Criteria for evaluating applications for training projects from institutions of higher education.

Comment. One commenter suggested that extra criteria points be awarded to those applicants that involve publishers in the development of training materials.

Response. No change is made. Grantees are encouraged to consult with a wide variety of groups in carrying out the project. Section 426 of GEPA requires consultation with publishers when grants are awarded for the development of curricula or instructional materials. Training projects in community education do not necessarily involve this type of activity. The types of projects in § 163d.11 (§ 160c.61) and activities in § 163d.12 (§ 160c.62) are representative of the types of projects or activities that the training grant may include. The list is not all inclusive. Since all grantees may not wish to include a curriculum development component, it would be inappropriate to include criteria points for this consultation.

Comment. One commenter suggested that too many points are awarded in § 163d.31(i)(2) (§ 160c.65)(e)(2)) for programs which impact a given audience or group, given the program emphasis on serving all segments of the community. The same commenter felt too much weight was given to dissemination, since the law indicated no need to impact beyond the area served.

Response. No change is made. The Commissioner awards a maximum of 100 points for all criteria under § 163d.31 (§ 160c.65). The maximum for dissemination is only 15 points or 15 percent of the total possible. The maximum points for the total criteria, potential for advancing community education, is 20 percent of the total possible, of which § 163d.31(i)(2) (§ 160c.65(e)(2)) is one of three factors. Thus, weight for this criterion is approximately 7 percent of the total possible points. It is important to note that major weight is given to EDGAR criteria. An applicant must address all areas, yet the absence of only one (outside EDGAR criteria) may not adversely affect that applicant. However, the criteria mentioned above are important components of training grants. The Commissioner encourages projects that will develop quality methods and procedures to advance community education. A primary consideration in selecting projects is their potential for appylying project results to other settings.

Comment. One commenter recommended that the regulations provide that contracts for the dissemination of materials be awarded on a competitive basis to public or private organizations which will provide assurances that the curricula and instructional materials will reach the target population for which they were developed.

Response. No change is made. These sections of the regulations do not apply to procurement contracts under the Act. For information concerning contracts, please refer to § 163.2(c) (1) and (2) (§ 160c.2(c) (1) and (2)).

Note.—This Appendix B will not be published in Title 45 of the Code of Federal Regulations.

Appendix B—Guidelines for State Community Education Program

1. *Purpose.* These guidelines are recommendations and suggestions for meeting the funding requirements for States under Sec. 808 of the Community Schools and Comprehensive Community Education Act of 1978 and its implementing regulations.

The guidelines describe permissible means of meeting the legal requirements of the Act and regulations and may be relied upon to that extent. The guidelines are not to be construed as legal requirements. Programs that do not come within these guidelines will not be prejudiced.

While there is a variety of ways that an applicant may plan for and then implement a State plan for community education, the following suggestions and guidelines are intended to assist a State in meeting the minimum requirements of the Act and in going beyond those requirements to implement a high quality State program.

(20 U.S.C. 3288, 45 CFR 163a.10)

2. *State educational agency functions.* With respect to the State plan, the regulations specify several requirements that can be met more effectively if adequate planning is carried out prior to submission of the plan. It should be helpful to a State in preparing its plan to consider the dual functions of a State community education program staff:

(a) *State-level and statewide activities.* These include—

(1) Developing and carrying out activities related to State-level planning, interagency coordination, statewide dissemination of information, and obtaining and maintaining citizen participation in the statewide community education effort;

(2) Conducting needs and resource assessments of State agencies and organizations;

(3) Cooperating with institutions of higher education for community education training;

(4) Coordinating activities with other statewide agencies, organizations, and associations; and

(5) Creating statewide awareness of community education.

(b) *Technical and financial assistance.* This includes—

(1) Providing technical and financial assistance to local community education programs within the State, including assistance to LEAs in meeting the minimum elements of the Act;

(2) Helping LEAs to develop applications for assistance under the Act;

(3) Helping LEAs to establish and maintain task forces and advisory bodies;

(4) Assisting local directors of community education, their staffs, and community members in the preparation of local budgets for community education;

(5) Helping evaluate local programs; and

(6) Assisting LEAs to work within the State plan for community education.

(20 U.S.C. 3284, 3288; 45 CFR 163a.11)

The guidelines that follow in sections (3) through (11) of this appendix apply to both State-level and statewide activities and assistance to local community education programs. Each State should consider the following areas while preparing the State plan and develop procedures to assist LEAs within the State consider these areas.

3. *Importance of citizen involvement in development of State plan.* The potential for success of both statewide and technical assistance programs will be greatly enhanced if there is broad representative involvement of diverse segments of the State's population prior to submitting the State plan, during the actual development of the plan, and during the carrying out and evaluation of the State plan.

The State is encouraged to consider developing an effective structure to citizen involvement. Involvement of a variety of interested individuals and groups within and outside the formal community education network increases the likelihood that the State's plan will reflect the needs of citizens.

(20 U.S.C. 3288; 45 CFR 163a.10)

4. *Ongoing citizen participation.* The State should form Advisory councils or groups of citizens to provide continual advice on the total State community education effort. A basic tenet of community education is citizen participation in education and in community problem solving and decision making. Therefore, it would be anomalous for a State that is supporting community education principles to operate a statewide program without the active and continuous involvement of individuals and appropriate groups, organizations, and agencies. This should include involvement in the planning, assessment, implementation, operation, and evaluation of the State program and local activities.

One method of participation might be an advisory council. While the council should be large enough to represent diverse groups and interests, it should not be so large that its size limits efficient operation. For some States a task force or several sub-unit task forces or study groups might be appropriate. Care should be taken to provide sufficient staff support for any council activities.

In keeping with the principles of community education, there should be active and continuous involvement of groups or individuals rather than short-term and interrupted. Also, in order to make citizen participation a component of all local community education projects, a State plan should include appropriate assistance to LEAs.

(20 U.S.C. 3288; 45 CFR 163a.10)

5. *Selection of community members.* In selecting individuals and groups to serve on an advisory council or otherwise provide advice to the State program, the State might consider the following for membership:

(a) Representatives of such groups as social agencies, recreation programs, community colleges, local action groups, and municipal agencies;

(b) Representatives of Federal and State programs, including the programs in Section 806 of the Act;

(c) Representatives of local community education programs, including personnel from cooperating agencies;

(d) Representatives of LEAs within the State;

(e) Representatives of the State education commission and the chief state school officer; and

(f) Representatives of volunteer organizations.

(20 U.S.C. 3288; 45 CFR 163a.10)

6. *Functions of council or citizen group.* The following are examples of functions that might be performed by an advisory council or citizens' group. The council or group might—

(a) Assist in statewide community education planning, including identification of target populations, assessment of needs, and selection of appropriate activities and priorities in response to these needs;

(b) Recruit personnel to assist State or local community education efforts and assist in identification of resources;

(c) Assist in the development of the staff of the community education program;

(d) Assist in identifying agencies that might desire to be involved in State or local community education efforts;

(e) Assist in disseminating information about community education;

(f) Coordinate the efforts of the community education program with appropriate State or local councils, community groups, professional organizations, public and private agencies; and

(g) Evaluate the State or local community education efforts.

(20 U.S.C. 3288; 45 CFR 163a.10)

7. *Program staff development.* The regulations set out several requirements that can be more effectively implemented if the State program staff have adequate experience and expertise in community education. For example, the State staff assists LEAs to: Work with all ages and with persons with special needs; conduct resource and needs assessments; work collaboratively with community agencies and organizations to provide diverse programs; and involve agencies, institutions, and groups in the community education effort.

While any one staff member may not have all of this experience or expertise, the State staff as a whole should have these experiences or should develop a statewide pool of individuals and groups who can provide assistance to LEAs. Additionally, quality staff training opportunities should be provided to enhance the total staff's ability to provide assistance to LEAs.

(20 U.S.C. 3288; 45 CFR 163a.10)

8. *Board of education support.* The Community Schools and Comprehensive Community Education Act includes a five-year program of decreasing Federal assistance to the States. It is assumed that at the end of the five-year cycle of Federal assistance, the State will have the capacity to sustain community education development from State and local resources. One important step toward establishing a base for this State capacity is to develop State education commission support for community education.

(20 U.S.C. 3288; 3295(a); 45 CFR 163a.10, .26)

9. *Expanding community education programs—needs assessment.* Knowledge of community education programs and services that exist in the

State is helpful in determining how the State should plan to expand community education programs. These guidelines suggest that each State introduce a systematic and effective procedure, on a continuing basis, to identify and determine priorities among statewide and LEA needs and plan activities that directly respond to these needs.

Additional information could be obtained by involving public and private agencies and organizations that might be helpful in (a) recruiting participants in the statewide and local efforts and (b) serving as resources of, for example, expertise, training, materials, and volunteers.

The SEA must consider the level of assistance to be provided to each LEA in one or more of the areas of planning, establishing, operating or expanding community education programs based on the statewide and local needs and resources.

(20 U.S.C. 3288(a)(1); 45 CFR 163a.23(c))

10. *Ten-year plan.* The statute and regulations specify that every State provide assurances in its State plan that it will develop a ten-year plan for the coordination of educational programs with all relevant community services. Collaboration is emphasized with public and nonprofit agencies and in the use of various resources. The intent of the statute is for each State, through shared resources, to assume responsibility for community education development.

The regulations state that the ten-year plan shall be completed no later than two years after the State receives its first grant under the State Community Education Program. The State should attach a copy of its ten-year plan with all three-year State plans submitted to the Office of Education for funding. Also, the State should include any amendments to the ten-year plan and describe how it is implementing the ten-year plan.

The ten-year plan should reflect the long range community education goals of the SEA and detail SEA relationships with other State and local agencies involved in the development of community education.

It would be helpful if the SEA were to involve various agencies in resource identification and in the development of a plan for coordination. This plan should provide for commitment of these agencies to develop community education after the expiration of Federal assistance. Although the regulations specify the involvement of State and local recreation authorities and associations, other State and local service agencies—including agencies providing community education training and other services related to community education—should be involved in the total process.

(20 U.S.C. 3288(a)(2); 45 CFR 163a.27)

11. *Evaluation.* The regulations require each SEA to evaluate each LEA program assisted. Both process and impact evaluations should be conducted. Process evaluation can be defined as a timely examination of project activities with respect to—

(a) How they correspond to plans and resources;

(b) The extent to which they appear to be effective; and

(c) How they can be improved.

Impact evaluation examines final results and asks whether the objectives were achieved and to what degree.

(20 U.S.C. 3288(a)(11); 45 CFR 163a.25)

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Part X

Department of Health, Education, and Welfare

Office of Education

Women's Educational Equity Act Program

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

45 CFR Part 160f

Women's Educational Equity Act Program

AGENCY: Office of Education, HEW.

ACTION: Final rule.

SUMMARY: This regulation governs awards for projects of general significance under the Women's Educational Equity Act of 1978. Its purpose is to promote educational equity for women in the United States and to enable educational agencies and institutions to meet the requirements of Title IX of the Education Amendments of 1972. This regulation includes two Subparts. Subpart A (General) includes requirements applicable to the Women's Educational Equity Act Program as a whole. Subpart B (Projects of General Significance) includes the description of authorized activities, program priorities, and evaluation criteria.

EFFECTIVE DATE: The regulation is expected to take effect 45 days after it is transmitted to Congress. Regulations are usually transmitted to Congress several days before they are published in the Federal Register. The effective date is changed if Congress disapproves the regulation or takes certain adjournments. If you want to know the effective date of this regulation, call or write the Office of Education contact person.

FOR FURTHER INFORMATION CONTACT: Dr. Leslie R. Wolfe, Director, Women's Educational Equity Act Program, Room 2147 FOB 6, 400 Maryland Avenue, S.W., Washington, D.C. 20202 (202) 245–2181.

SUPPLEMENTARY INFORMATION:

Background

The Women's Educational Equity Act (WEEA) was enacted in 1974 to promote educational equity for women through a program of discretionary grants and contracts. The Act was reauthorized and substantially revised by the Education Amendments of 1978 and is recodified as Title IX, Part C of the Elementary and Secondary Education Act. The reauthorized Act includes a new purpose, to provide financial assistance to enable educational agencies and institutions to meet the requirements of Title IX of the Education Amendments of 1972.

Rulemaking History

The Commissioner of Education published a Notice of Proposed Rulemaking (NPRM) in the Federal Register on May 25, 1979 (44 FR 30540) to amend the regulation governing the Women's Educational Equity Act Program. The amendments reflected the substantial changes in the Act. These statutory changes were described in detail in the preamble to the NPRM. Additional amendments were proposed for the purposes of program reform and conformity with the Education Division General Administrative Regulations (EDGAR).

The Commissioner received approximately 100 letters, including over 400 separate comments on various sections of the proposed regulation. Public hearings were held in June, 1979, in the ten HEW regional offices and transcripts of the testimony were submitted to the Commissioner. In addition, the National Advisory Council on Women's Educational Programs, which was consulted throughout the development of the proposed regulation, provided detailed comments on the NPRM.

Based on a review of all the comments, the Commissioner has made important changes in both the substance and structure of the final regulation. The next part of this preamble discusses major changes in the final regulation. The last part contains a summary of the comments received on each section of the regulation with a statement of changes made in response to those comments or an explanation of why recommended changes were deemed inappropriate.

Major Changes in the Final Regulation

1. *Assistance Grants of Local Significance:* The NPRM included rules governing awards under a new program entitled "Assistance Grants of Local Significance". The purpose of this program is to support activities incident to achieving compliance with Title IX and activities to ensure equal educational opportunities for both sexes. However, the program has not been funded for Fiscal Year 1980, the year in which this regulation takes effect.

Public comment on the rules proposed to govern this program reflect widespread confusion about their meaning and purpose and raise questions about the ability of the program to operate under the proposed rules. In order to respond to these serious concerns, substantial changes in the regulation are required. To make these changes, the Commissioner must publish a new notice of proposed rulemaking. As a result, publication of a final regulation governing assistance grants of local significance is being deferred.

Rather than issue a new NPRM at this time, particularly as the program is not funded for Fiscal Year 1980 and a final regulation, therefore, is not needed immediately, the Commissioner is initiating an intensive review of the regulation and intends to publish a substantially revised notice of proposed rulemaking next spring. Comments received on the NPRM will be considered in the development of the new proposed rules.

This final regulation, therefore, governs *only the program of projects of general significance.*

2. *Restructuring of the Regulation:* The proposed regulation included a "General" section (Subpart A) and two unnumbered sections: (1) "Demonstration Projects of General Significance", and (2) "Assistance Grants of Local Significance". Each of these unnumbered sections included its own Subparts B through E. The proposed regulation, therefore, had two Subparts B, two Subparts C, two Subparts D, and two Subparts E. This structure made the proposed regulation difficult to follow.

The structure of the final regulation has been changed to resolve this serious problem. The final regulation includes a "General" subpart (Subpart A) which includes all sections that apply to any WEEA grant. Subpart B describes the program of "Projects of General Significance", and Subpart C is reserved for the program of grants of local significance, for which new proposed regulations will be published next spring. Other changes have been made within each subpart to consolidate and clarify provisions of the NPRM. Matters that are treated in EDGAR, such as preapplications and the open meeting requirement, are not contained in the final regulation. There is no change in the substance of the NPRM provisions on these matters.

3. *Program Priorities:* A major change in the Act is a requirement that the Commissioner establish priorities to ensure the most effective use of the funds available. The NPRM identified and described six priorities, which generated extensive public comment. The comments received on these priorities and the Commissioner's responses are summarized in the last section of this preamble.

The final regulation establishes five priorities. Three of the priorities proposed in the NPRM have been eliminated: the priority for demonstrations of WEEA materials and programs; the priority for dissemination centers; and the priority for a national WEAA program for change.

One of the priorities proposed in the NPRM, the priority for groups to receive special emphasis, has been expanded into three priorities. The final regulation

establishes separate priorities for model projects dealing with three groups: racial and ethnic minority women and girls; disabled women and girls; and leaders in educational policy and administration.

The other two priorities proposed in the NPRM, the priority for projects in elementary and secondary education and the priority for high risk-high potential projects, have been revised.

The next paragraphs summarize each of the priorities established in the final regulation.

(a) *Model projects on Title IX compliance:* The purpose of this priority is to develop model programs and materials that will assist educational institutions to achieve compliance with Title IX. Products developed by grantees under this priority can be used by local educational agencies (LEAs), institutions of higher education, community groups, student groups, women's groups and others; these products will be especially useful to applicants for grants to conduct projects of local significance, when the second program of grants of local significance is funded in the future.

The Commissioner expects to support a variety of projects under this priority, focused on various types of users, on various Title IX issues, and on various groups, including educators, parents, and students. The Commissioner also may support projects that include activities that address areas not covered by Title IX, such as textbook reform if these are tied to Title IX compliance activities to be carried out under the grant.

This priority reflects a shift in emphasis from the proposed regulation, which included a priority for "model programs on sex discrimination and sex bias in elementary and secondary education". The primary purpose of the proposed priority was to develop models for use by LEAs and other eligible applicants for grants of local significance. However, the focus was exclusively on elementary and secondary education and the content was broadly defined to include all activities to provide "equal educational opportunities for both sexes". The revised priority focuses on Title IX compliance activities at every level of education.

(b) *Model projects on educational equity for racial and ethnic minority women and girls:* The purpose of this priority is to focus much-needed attention on developing model programs and materials which address the situation of double discrimination faced by racial and ethnic minority women. The Commissioner expects to support a variety of projects that address issues of sex and race/ethnic bias, stereotyping, and discrimination at every level of education and that attempt to develop models for overcoming barriers imposed on minority women by combined race/ethnic and sex bias.

(c) *Model projects on educational equity for disabled women and girls:* The purpose of this priority is similar to that for priority (b) above. The Commissioner will focus attention on developing model programs and materials that address the educational needs of disabled women and that seek to overcome barriers to their full participation in educational programs resulting from double discrimination, bias, and stereotyping on the basis of sex and disability.

(d) *Model projects to influence leaders in educational policy and administration:* The purpose of this priority is to increase the commitment to Title IX compliance and to educational equity for women among educational policymakers, administrators, and organizations. The Commissioner expects to support a variety of projects which develop strategies to ensure Title IX compliance and educational equity. The Commissioner believes that true institutional change can occur only when commitment to it comes from the institution's leaders and is conveyed effectively as a priority for the institution. Many educational leaders need assistance in developing effective mechanisms for conveying their support for educational equity for women in concrete ways. This priority is designed to develop model projects to assist in this effort.

(e) *Model projects to eliminate persistent barriers to educational equity for women:* The purpose of this priority is to support projects that address the most critical and unyielding problems in achieving educational equity. The Commissioner will support projects that focus on critical issues related to intractable institutional or attitudinal barriers to the achievement of equity in areas where little change has occurred, such as physical education, vocational education or educational administration.

In the NPRM, this priority was proposed as a priority for "high risk-high potential" projects. The Commissioner recognizes that projects which try to eliminate the most persistent barriers to educational equity may entail a risk of failure, because solutions are extremely difficult to find and strategies for reaching them may not work. The Commissioner also believes that addressing these severe problems is of great importance in efforts to achieve the purpose of the WEEA—to ensure educational equity for women. The Commissioner, therefore, is willing to target some resources on new strategies to break down these barriers.

In addition to these priorities, the Commissioner may continue to provide funds for other authorized activities related to educational equity for women and girls. The establishment of priorities does not imply that the Commissioner discourages applications in other important areas.

4. *Annual designation of priorities for funding:* The NPRM proposed that the Commissioner would select from the priorities described in the regulation those to be funded each year; the NPRM did not provide for public involvement in this process. While the final regulation does not require the Commissioner to use public comment procedures, the Commissioner intends to solicit public comment each year on which priorities should be selected for funding and on the amount of funds to be allocated to each selected priority. The only circumstance under which the Commissioner foresees that public comment would not be solicited is when time does not permit the use of these procedures. Because of the lateness of the publication of this final regulation, it would not be possible to make Fiscal Year 1980 awards on a timely basis if public comment on this year's priorities were solicited. As a result, this year's priorities are set out in the application notice published in the Federal Register on February 26, 1980 at FR 45 12499. In future years, the Commissioner anticipates that public comment will be possible.

The Commissioner believes that the priorities set out in the final regulation reflect the WEEA Program's policy of targeting its resources on areas of greatest need, supporting the development of model projects to provide educational equity for the most underserved groups of women, and encouraging institutional change and the elimination of sexism in educational policy and practices. In addition, the Commissioner believes that, by making many changes suggested by public commenters, the WEEA Program expresses its commitment to public involvement in determining the Program's policy and programmatic strategies for achieving the purposes of the Act. The knowledge and experience of educators, students, the members of the National Advisory Council on Women's Educational Programs, feminist organizations, and other constituents are valuable resources for the WEEA Program. This is the basis for the Commissioner's decision to seek

public comment each year on the annual priorities.

5. *Evaluation criteria:* The criteria for evaluating an application focus on the extent to which the proposed project addresses significant educational equity needs in a realistic and effective manner. Five criteria are established for general grants, for a total possible score of 100 points. In addition to these, a sixth criterion applies only to small grants, for a total possible score of 105 points. These criteria are set forth in §§ 160f.30–35 and are briefly described below:

Section 160f.30—*Need and impact (24 points).* The purpose of this criterion is to determine the extent to which the needs addressed by the project are significant to the achievement of educational equity for women.

Section 160f.31—*Objectives (16 points).* The purpose of this criterion is to determine whether the project's objectives are likely to meet the identified needs and whether the approach to achieving the objectives is a realistic one.

Section 160f.32—*Plan of operation (40 points).* The purpose of this criterion is to evaluate the effectiveness of the proposed strategy and activities designed to achieve the project's objectives. In addition, the proposed management plan, budget, and evaluation plan are evaluated. The process by which the applicant plans to involve appropriate individuals and groups in the project also is reviewed. Finally, the Commissioner evaluates the applicant's specific plans to address the educational equity needs of racial and ethnic minority women in the project.

Section 160f.33—*Applicant's commitment to educational equity for women (10 points).* The purpose of this criterion is to evaluate the applicant's demonstrated commitment to educational equity for all women through review of various factors, including employment practices and programmatic activities.

Section 160f.34—*Staff qualifications (10 points).* Under this criterion the qualifications and capability of both the project director and staff are evaluated. Volunteer experience and involvement in feminist groups are considered, along with formal education and paid work experiences.

Section 160f.35—*Innovative approaches (5 points).* This criterion applies only to applicants for small grants and is designed to evaluate how well the application achieves the purpose of the small grant program, to develop innovative approaches to the achievement of educational equity.

These criteria differ in several respects from those proposed in the NPRM. The changes have been made in response to public comments which are described in detail in the next section of this preamble. The criteria have been rewritten with an eye to simplicity, clarity, and specificity. The following comments were submitted in response to the proposed regulation. After the summary of each comment a response states the changes that have been made in the regulation or the reasons why no change is considered appropriate. The comments are grouped according to the sections of the proposed regulation with which they are concerned.

Section 160f.1—Women's Educational Equity Act Program.

Comment: One commenter recommended that this section state specifically that the purpose of the program is to promote educational equity in all educational settings, including projects sponsored by non-educational institutions, such as the YWCA and other community groups.

Response: The regulation has not been changed. There is nothing in the regulation that would restrict the educational settings in which projects may be carried out. In addition, the regulation clearly states that all non-profit organizations, including community groups, are eligible to apply.

Section 160f.2—Eligible applicants and offerors.

Comment: One commenter criticized the exclusion of profit-making organizations as eligible applicants.

Response: The regulation has not been changed. Section 932(a) of the Act limits eligible applicants to public agencies, nonprofit organizations, and individuals.

Section 160f.4—Educational equity for women.

Comment: One commenter asked that a definition of "equality" be added. Another commenter asked that student organizations be added to the list of groups that should be responsive to the educational needs of women.

Response. The regulation has not been changed. "Educational equity for women" is the term that is relevant for purposes of the WEEA Program. A general definition of equality is unnecessary. The list of groups that should be responsive to the educational needs of women ("* * * policy makers, administrators, instructors, counselors, and other personnel") focuses on those who have authority in the education system. As a result, student organizations, along with other constituent groups, are not included.

Section 160f.10 Demonstration projects.

Comment. Several commenters criticized the prohibition on providing funds directly to an individual for college tuition. Others expressed confusion about whether such costs are, in fact, allowable.

Response. To avoid repetition and confusion, this paragraph has been deleted. However, the regulation states that costs for tuition and fees can be provided only when necessary to the success of a long-term training project funded under a WEEA grant.

Section 160f.12 Equity in education.

Comment. Several commenters objected to the requirement that projects "may address issues of women's rights only within education".

Response. The regulation has not been changed. However, this provision does not limit applicants to those from educational institutions nor does it discourage diversity of project focus. Rather, it limits the focus of WEEA projects to activities that will achieve the purpose of the Act, to "promote educational equity for women". The definition of educational equity for women" included in § 160f.4 is a very broad and inclusive one.

Sections 160f.14,160f.42 Participation by men: Non-discrimination.

Comment. Some commenters supported this provison. Others objected, believing that quotas would be required to prevent discrimination against men. Commenters also suggested that the language of the Act itself is clearer and sufficiently comprehensive. They recommended that the statutory language be used in place of the language in these sections.

Response. These sections have been consolidated and revised to more closely reflect the language of the Act. The regulation does not require that men participate in all WEEA projects. The participation of men in certain activities, such as continuing educational activities for underemployed or unemployed women, may not be appropriate. However, where the participation by men in a project activity would not frustrate the purpose of the activity they may not be barred from participation. This section does not impose an obligation on grantees to recruit men to participate in WEEA projects. As regards employment the elimination of language in the proposed rule prohibiting discrimination in that area is not intended to relieve applicants of their obligation to hire without regard to sex. Rather, repetition of this

requirement in the regulation was regarded as unecessary.

Section 160f.15 General grants.

Comment. One commenter requested clarification on the monetary limits on general grant awards.

Response. The regulation has not been changed. The WEEA Program does not limit the size of a general grant. Potential applicants should refer to the application notice published each year in the **Federal Register** for the range of awards for general grants.

Section 160f.16 Small grants.

Comments. One commenter expressed confusion about the meaning of this provision and another questioned the broad definition of innovative approaches in paragraph (b).

Response. The definition of "innovative approaches" in paragraph (b) has been deleted. In applying the statutory requirement that small grants support innovative approaches to achieving the purposes of the Act, the Commissioner will be guided by the meaning of the term "innovative" in common usage. In addition, a new evaluation criterion for small grants has been added to assess the extent to which the applicant's project will use a new or untried approach to achieving educational equity for women.

Section 160f.17 Contracts.

Comment. One commenter requested clarification regarding this provision.

Response. This section has been rewritten to indicate that contracts may be awarded for particular purposes to promote educational equity and to state the procedures that are used to award contracts.

Section 160f.20 How to use regulations and apply for a grant.

Comment. One commenter objected to the requirement that applicants refer to the regulation, its Appendix, and EDGAR.

Response. To simplify the application process, the Appendix has been omitted in the final regulation. The pertinent information contained in the Appendix, such as the amount of payments for stipends, has been incorporated into the text of the regulation. Applicants still are required to use EDGAR, as it contains many provisions which apply to the WEEA program.

Section 160f.21 State review.

Comment. One commenter requested clearer specification of the role of the State Department of Education.

Response. The requirements for State review of an LEA's application has been deleted because it is not required by the Act and creates an unnecessary burden on LEAs.

Section 160f.23 Preapplications.

Comment. Several commenters urged the Commissioner to institute the preapplication process. The commenters believed that this process makes proposal planning and preparation a much more manageable task.

Response. This section has been deleted because authority to request preapplications is contained in EDGAR (45 CFR 100a.130–100a.134). While it is impossible to require the preapplication process for Fiscal Year 1980 because the regulation will not be published in time to allow for submission and review of both preapplications and applications prior to the closing date the Commissioner intends to use the preapplication process in the future beginning with Fiscal Year 1981.

Section 160f.30 Award decisions for demonstration projects.

Comment. Many commenters agreed that award decisions should be based in part on the need to avoid duplication of previous WEEA projects and to ensure that a variety of delivery systems are supported. Some commenters recommended changes in the section, including the strengthening of the factor relating to the avoidance of duplication. These commenters suggested the addition of points under the evaluation criteria for these concerns. Two commenters critized the use of geographic diversity as a consideration, stating that experts in educational equity, as well as low income and minority women, who are concentrated in certain regions of the country, would be shortchanged. Other commenters suggested the inclusion of student organizations in the list of examples of possible delivery systems. One commenter suggested that postsecondary education (vocational colleges, specifically) be included in the list of levels of education. Finally, commenters suggested that "needs" be added as an additional factor to be considered in making awards.

Response. The regulation has been revised to include "diversity of needs" as a factor to be considered in making grants. Further, student organizations have been included in the list of examples of delivery systems. Because an evaluation criterion already focuses on the extent to which an applicant is knowledgeable about similar projects and demonstrates that its project makes a distinct contribution, the Commissioner believes that further strengthening the factor regarding avoidance of duplication is unnecessary. The factor relating to geographic distribution has been retained. This factor is one among several to be considered and will not lead to the ignoring of an applicant's expertise, nor will it limit support for projects for low income and minority women.

Section 160f.31(a), (b)—Evaluation criteria for demonstration projects (Need and Impact).

Comment: Several commenters suggested clarifications in the language and purpose of the criterion addressing "need". One commenter suggested that this criterion specify Title IX as a purpose of the Act. Other commenters recommended that the criterion include specific requirements that would enhance evaluation of the centrality of the needs to be addressed.

Several commenters were critical of the criterion addressing "impact" and objected to the requirements that applicants submit a dissemination plan and demonstrate financial commitment to the project. The commenters generally agreed that it was unreasonable to require a dissemination plan because it would be duplicative of the work currently performed by the WEEA Programs' dissemination contractor. Commenters suggested that non-traditional recipients, such as women's organizations, would find the requirement for in-kind contributions impossible to meet. Finally, commenters questioned whether organizations have the ability to make an honest commitment to incorporate project results in the on-going program of the agency after termination of the WEEA-funded project. One commenter expressed the concern that such a provision could be misconstrued as a matching requirement for which there is no legal basis.

Response: The criteria for "Need" and "Impact" have been revised and combined into one criterion, for a total of 24 points. The requirements for a dissemination plan and a demonstration of financial commitment have been deleted, in part because they are likely to place an undue burden on many applicants, particularly women's, student, and other community organizations. The criterion has been rewritten to explicitly require applicants to demonstrate how the project focuses on needs that are central to the purpose of the Act, to document the significance of the needs addressed, to show knowledge of similar projects, and to demonstrate how the applicant's project makes a distinct contribution. Applicants also must demonstrate the

national, statewide or general significance of the proposed project.

Section 160f.31(c)—Evaluation criteria for demonstration projects (Plan of operation).

Comment: Many commenters recommended that the criterion for "Plan of operation" be clarified and that the number of points awarded for the management plan and for the reasonableness of proposed costs be reduced. The commenters also objected to the subjectivity and lack of specificity of such terms as "quality" and "understanding", which were used throughout the description of the criterion. Some commenters also thought that the requirement (described in the Appendix to the NPRM) that applicants document the needs of women from special population groups and develop objectives, plans, and activities to address those needs, imposed an undue burden on applicants.

Response: The criterion for "Plan of operation" has been rewritten. A new criterion has been established to assess "Objectives". This criterion is assigned 16 points and evaluates the extent to which the project's objectives are likely to meet the identified needs. The criterion also evaluates the extent to which the approach to achieving the objectives is a realistic one. The criterion still is weighted heavily, with a total of 40 points. However, the number of points for reasonableness of costs has been slightly reduced. In addition, the criterion's requirement that applicants demonstrate "diverse approaches" to the needs of various population groups has been clarified. Specific language has been added to indicate that the criterion evaluates the extent to which the applicant's project will address or can be adapted to address the educational equity needs of racial and ethnic minority women.

Section 160f.31(d)—Evaluation criteria for demonstration projects, (Applicant and staff qualifications).

Comment: Many commenters supported the criterion's reduced emphasis on previous experience in the area of women's educational equity in order to permit the funding of new organizations, particularly grass roots women's groups. Other commenters opposed this provision because it would encourage large institutions and organizations that had exhibited little or no concern for women's educational equity issues to apply and would offer those groups unfair advantage over smaller groups that are less sophisticated in proposal writing. Some commenters suggested that one criterion could be established to consider the qualifications of the project director, staff, and consultants together. Commenters recommended that the Commissioner review the relative positions of women not only on the project staff, but also throughout the applicant institution. Finally, one commenter questioned the feasibility of attempting to judge an applicant's "commitment" to educational equity for women.

Response: The criterion of "Applicant and staff qualifications" has been rewritten. The final regulation includes two criteria, one for "Applicant's commitment to educational equity for women" and one for "Staff qualifications". Each criterion is assigned 10 points. The first criterion evaluates the applicant's demonstrated commitment to educational equity for all women through review of various factors, including programmatic activities and employment practices particularly with regard to positions throughout the applicant institution in which women have been underrepresented. The second criterion assesses the qualifications of the project director and the project staff. Additional points have been added to the criterion for "commitment". These changes indicate the Commissioner's desire to support institutions, organizations, and groups of various sizes, types, and levels of sophistication that have demonstrated a commitment to the full and fair participation of women in their activities at every level.

Section 160f.31(e)—Evaluation criteria for demonstration projects (Priority).

Comment: Several commenters stated that providing an additional ten points to those applicants that chose to compete in a priority area duplicated the evaluation criteria on need and impact and thus served no useful purpose.

Response. The criterion for "Priority" has been deleted. Each application in a particular priority area will be evaluated under the criterion for "Need and impact" on the extent to which it addresses significant needs, demonstrates the importance to those needs, and shows that the proposed project is likely to meet those needs, within the purpose of the priority.

Section 160f.32 Program priorities: General.

Comment. Some commenters questioned whether equal amounts of money would be allocated to each of the six priorities and, if not, who would determine the allocations. One commenter asked whether the priorities selected each year would be only those cited in the final regulation. Several commenters strongly recommended that the Commissioner publish the proposed annual priorities and allocations of funds each year in the **Federal Register** for public comment before final decisions are made. It was recommended that this procedure apply to small grants as well as general grants.

Several commenters objected to the provision that an application which does not identify a priority, or which incorrectly identifies a priority, will be rated with other applications outside the priority areas. Commenters felt that this policy was too harsh, particularly since the proposed regulation also provided an additional ten points in the evaluation criteria that can be earned only by applications within a priority area. Commenters recommended that the Commissioner be required to select the priority under which an application should compete, if the applicant fails to identify a priority or incorrectly selects a particular priority.

Response. The regulation has been revised to make clear that the Commissioner will select priorities to be funded during any given year only from among the priorities included in this regulation. Although it is possible that the Commissioner will decide to allocate equal amounts of money to each priority in a particular year, the Commissioner is not required to do so and will determine each year the appropriate amounts to allocate to each selected priority.

The regulation has not been amended to require the Commissioner to request public comment on proposed priorities and fund allocations each year. However, the Commissioner intends to use public comment procedures each year in which time permits.

The regulation has not been amended to require that the Commissioner select the correct priority for an applicant. Instead, the language of the regulation has been clarified to indicate that applications submitted in a priority area compete only against other applications in that priority and to specify that an applicant must identify the priority area in which it wishes to be considered. Further, applicants may choose to compete for funds allocated to other authorized activities outside the priority area. Applicants which do not identify a priority will compete in this category. The evaluation criterion that awarded up to ten additional points for applicants in any priority area has been deleted.

It is both inappropriate and impracticable for the Commissioner to decide for an applicant in which priority or priorities it should compete. Although the Commissioner wishes to be of assistance to prospective applicants, the

WEEA program expects to receive at least 750 applications in fiscal year 1980. It will be impossible for the Commissioner to review each of these applications in order to select priority areas for them. The Commissioner believes that the amended descriptions of the priorities are clear enough that applicants should not be confused about where their proposed projects are eligible.

Finally, the regulation has been revised to indicate that the Commissioner may apply these priorities to the small grant program and will announce that decision each year. The procedures that govern general grants will apply to small grants as well in any year in which the Commissioner uses priorities for the small grant program.

Section 160f.33 Priority for demonstrations of WEEA materials and programs.

Comment. Most of the comments on this priority were highly critical for a variety of reasons. Several believed that projects funded under this priority would not lead to more widespread use of WEEA materials. Some commenters felt that this priority would represent an unnecessary duplication of both ongoing grant activities and the activities of the WEEA contracts for National Demonstrations of Educational Equity for Women, recently awarded. Many commenters suggested alternative uses for the funds that might be allocated to this priority.

Response. The priority for demonstrations of WEEA materials and programs has been eliminated.

Section 160f.34 Priority for dissemination centers.

Comment. Several commenters suggested substantial revisions to this priority. Many commenters noted that the activities to be supported under this priority directly duplicate activities of both the WEEA dissemination contractor and the Women's Educational Equity Communications Network (WEECN), also funded under the Act. Many commenters wondered how LEAs could compete under this priority; others asked whether materials were to be produced locally or whether materials prepared for national dissemination were to be distributed locally.

Some commenters were confused regarding the definitions of "regional" centers and asked whether the boundaries would be those defined by the ten Federal regions or whether an applicant could form its own region from several counties, cities, or states. One group of commenters opposed the funding of "regional centers", because they might duplicate the activities of the ten regional Sex Desegregation Assistance Centers funded under Title IV of the Civil Rights Act of 1964. In addition, these commenters objected to the funding of centers that would promote the use of WEEA products to the exclusion of other important products developed without the benefit of WEEA grants. They proposed that the funds instead be used to support centers that would serve as network builders and catalysts for community involvement.

Response. The priority for dissemination centers has been eliminated. The confusion expressed regarding its purpose and the serious question of duplication of existing Title IV and WEEA contract activities are compelling arguments. The Commissioner agrees with those commenters who indicated that dissemination of products and materials is one of the WEEA Program's most important activities. Therefore, although this priority has been eliminated, the WEEA Program intends to reassess its dissemination policy and practices during the next year and propose changes where needed to meet more effectively the needs of its grantees and constituents. If necessary, proposed changes will be published for public comment in the **Federal Register.** In the meantime, the WEEA Program welcomes comments on its dissemination activities.

Section 160f.35 Priority for model projects on sex discrimination and sex bias in elementary and secondary education.

Comment. Most of the commenters on this priority proposed a shift in its emphasis. Several commenters objected to the exclusion of postsecondary education while another recommended that the preschool level be included. One commenter suggested that emphasis should be placed on the elimination of sex bias in textbooks through the development of a model textbook series. A group of commenters suggested directing the focus to one or two critical issues that most urgently need attention rather than using the "scattershot" approach. These commenters also objected to the requirement that grantees include in all materials developed an indication of which policies and practices discussed are required by Title IX. The commenters suggested that serious legal questions could arise regarding the competence of any but the official enforcement agency or the courts to determine how the Title IX regulation will be applied.

Response. This priority has been redefined and entitled "Priority for model projects on Title IX compliance". Its emphasis is more clearly on the development of model programs and materials to achieve compliance with Title IX. Products developed under these grants can be used by LEAs and others that will be eligible to apply for grants to conduct projects of local significance when the second program of grants for projects of local significance is funded in the future. The priority has been changed to include all levels of education, not only elementary and secondary education. In addition, clearer direction is provided on types of activities and projects to be supported under this priority.

Although the priority is not targeted narrowly on developing a model textbook series, as one commenter suggested, the regulation makes clear that activities such as textbook reform which are not covered by Title IX may be included in a proposed project if they are tied to other Title IX compliance activities carried out under the project. The provision requiring that applicants indicate in the materials they develop which policies and practices discussed are covered by Title IX has been deleted.

Section 160f.36 Priority for groups to receive special emphasis.

Comment. Numerous comments were received on this priority. More comments addressed § 160f.36(a), "Neediest girls and women", than any other priority area. All of the comments enthusiastically supported the priority's emphasis on the needs of minority, low income, and disabled women. Several commenters strongly recommended that a separate priority be established to address the educational needs of minority women or that special emphasis on minority women be included within the proposed priority. Other commenters recommended the inclusion of additional target groups, such as students, student organizations, community groups, teen-age mothers, single mothers, re-entry women, women over 45, incarcerated women, rural women, and displaced homemakers. Others suggested that discrimination on the basis of marital status and age be added.

Several commenters objected to combining the two subsections of this priority, ((a) Neediest girls and women, and (b) Leaders in educational policy and programs), because they are very different kinds of groups with different needs and concerns. Many commenters

suggested that at least two priorities should be created from the proposed priority to reflect both the significance of each group and the differences between them.

Several commenters feared that the power differential between the educational leaders and the underserved groups represented by "neediest" girls and women would lead to a shortchanging of the latter. These commenters believed that proposals focused on educational leaders would inevitably have an unfair advantage over those focused on minority, low income, and disabled women and girls. Other commenters objected to the combination of poverty and current or past discrimination as criteria for "neediest", because of the implication that minority women must be poverty-stricken in order to achieve high priority. These commenters suggested that poverty and discrimination be separated as criteria for consideration because they reflect different needs and problems.

Most of the commenters on the subsection for "leaders in educational policy and programs" also recommended that this subsection be established as a separate priority. In addition, commenters recommended that the priority describe the agencies and organizations in more detail, include the information provided in the Appendix, and clarify the language substantially.

Response. The regulation has been changed to separate the priority for "special emphasis" groups into three priority areas. The first responds to the overwhelming concern addressed by commenters and establishes a priority for "model projects on educational equity for racial and ethnic minority women". The second, responding to a similar concern, establishes a separate priority for "model projects on educational equity for disabled women". The third new priority represents an expansion of subsection (b) "Leaders in educational policy and programs". It focuses specifically on the need to increase the commitment to Title IX compliance and to educational equity for women among educational policymakers, administrators, and influential organizations.

The titles of the new priority areas have been revised to more appropriately identify the particular population groups on which the priorities focus. Further, the language of the priorities has been clarified to more explicitly reflect their purpose. The priority for racial and ethnic minority women and the priority for disabled women have been rewritten to reflect their intended emphasis on issues of double discrimination, bias, and stereotyping.

Although some commenters recommended that these priorities focus on various other target populations, the Commissioner believes that the limited resources available to the WEEA Program can be used most effectively if they are targeted more narrowly. Although other groups certainly are in need of assistance in overcoming the effects of sex bias, the Commissioner believes, and most commenters agreed, that the WEEA Program now should address itself to the effects of immutable factors such as race/ethnicity and disability, which combine with sex to produce the most severe forms of oppression and "double discrimination". This is not to say that the needs of older women, teenage mothers, re-entry women, rural women, displaced homemakers, and other groups of women identified by commenters as in need of special attention will not be included in projects funded under the current priorities. The WEEA Program expects to continue its commitments to meeting the educational needs of all women and hopes to receive applications that address these needs under all five priorities, as appropriate, as well as in "other authorized activities" outside the priority areas.

Section 160f.37 Priority for a national WEEA program for change.

Comment. All of the comments on this priority reflected concern about its purpose and possible implementation. Those commenters who approve of the concept of training centers raised concerns regarding eligibility requirements, responsibilities of program participants, and selection criteria for participating school districts. In each case, recommendations for substantial change were made. Some commenters suggested the establishment of quotas for participants on the basis of race, national origin, or handicap. Others recommended that the priority be expanded to include baccalaureate training and long-term training in the area of vocational education. Others suggested that priority be given to women who already have earned certification in administration and supervision.

Several commenters were critical of the proposed priority and expressed doubts about the need to establish multiple training centers. Some commenters feared that the WEEA training centers would duplicate existing efforts, such as those under Title IV of the Civil Rights Act of 1964 and the National Endowment for the Humanities. Other commenters were concerned that employment opportunities would not be available to those women who completed the training. Commenters also were concerned about the concentration on developing new training programs at the graduate level rather than focusing on improving existing graduate programs. These commenters feared the establishment of training "ghettos" and the development of a cadre of unemployed or underemployed WEEA-trained women.

Response. The priority for a national WEEA program for change has been deleted. Although the Commissioner believes that it is both necessary and important to develop future leaders in educational equity for women, the concerns raised by commenters proved compelling, particularly the fear that this priority would lead to the development of a "ghetto" of educational equity workers who would not find long term employment in the field. The WEEA Program instead believes that a more effective strategy is to focus attention, through its other priorities, on training educational leaders and other individuals who have direct influence on educational policy and practices, and thereby increasing their commitment to compliance with Title IX and to advancement of educational equity for women and girls. In addition, to avoid duplication of existing training activities in this area, the WEEA Program will seek to coordinate its activities with existing training programs (particularly those funded under Title IV) and jointly determine the extent of need for additional training centers, programs, or courses.

Section 160f.38 Priority for high risk-high potential.

Comment. All of the commenters on this priority supported the special emphasis on difficult and unyielding problems in the achievement of educational equity for women. Many also offered suggestions for improvement of the priority. Several commenters recommended that the regulation identify a similar "critical issues" priority, that would address intransigent and important barriers to educational equity for women, but would be defined more precisely. These commenters suggested that the Commissioner annually select one critical issue from among those enumerated and invite applications to address different aspects of the problem. Other commenters requested additional guidance to applicants to enable them to determine whether their proposed projects would fall under this priority or another.

Response. The priority has been revised to clarify its purpose and to respond to commenters' concern that applicants need additional information to determine whether their proposed projects fall under it. The priority now is entitled "Priority for model projects to eliminate persistent barriers to educational equity for women". Although a separate "critical issues" priority has not been established, the rewritten priority incorporates the concepts embodied in the recommendation to the extent possible. The Commissioner has chosen not to limit the selection of issues in future years to only certain critical issues defined at this time. Rather, the regulation defines the concept of persistent barriers to be addressed by this priority. The particular issues may change over time. Each applicant has the opportunity to demonstrate the significance of the issues to the achievement of educational equity and the persistence of the barriers that the project addresses.

Section 160f.40 Evaluation.

Comment. One commenter questioned whether the Commissioner has the authority to require successful applicants to submit an additional evaluation plan as a condition of the grant award.

Response. The section has been rewritten to make clear that the detailed evaluation plan required of successful applicants is merely an expansion of the evaluation plan submitted in the grant application and is not an additional requirement. An applicant that submitted a sufficiently detailed evaluation plan with its application is not required to submit an additional plan.

Sections 160f.50–160f.82 Assistance grants of local significance.

Comment. The commenters on these sections generally were critical of the proposed regulation's provisions, and suggested substantial changes in each section.

Response. In order to respond to all of the serious concerns raised by commenters, major changes are required in the regulation for grants of local significance. To make these changes, the Commissioner must publish a new Notice of Proposed Rulemaking. Rather than issue new proposed rules at this time, the Commissioner is initiating an intensive review of the issues raised by public comment and intends to publish a substantially revised NPRM next spring.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of the regulation.

Accordingly, 45 CFR Part 160f is amended to read as set forth below.

Dated: February 14, 1980.

(Catalog of Federal Domestic Assistance Program No. 13.565, Women's Educational Equity Act Program)

William L. Smith,

U.S. Commissioner of Education.

Part 160f of Title 45 of the Code of Federal Regulations is revised to read as follows:

PART 160f—WOMEN'S EDUCATIONAL EQUITY ACT PROGRAM

Subpart A—General

Sec.

160f.1 Women's Educational Equity Act Program: Purpose.
160f.2 Eligible applicants.
160f.3 Regulations that apply to the Women's Educational Equity Act Program.
160f.4 Definitions.
160f.5 Equity in education.
160f.6 Equity for all women: Diverse approaches.
160f.7 Participation by men: Nondiscrimination.
160f.8 Evaluation.
160f.9 Indirect costs.
160f.10 Allowable costs.
160f.11 Payment for training and for participation in the testing of materials and programs.

Subpart B—Projects of General Significance

160f.20 Authorized activities.
160f.21 Types of awards.
160f.22 Program priorities—General.
160f.23 Priority for model projects on Title IX compliance.
160f.24 Priority for model projects on educational equity for racial and ethnic minority women and girls.
160f.25 Priority for model projects on educational equity for disabled women and girls.
160f.26 Priority for model projects to influence leaders in educational policy and administration.
160f.27 Priority for model projects to eliminate persistent barriers to educational equity for women.
160f.28 Award decisions.
160f.29 Evaluation criteria.
160f.30 Evaluation criterion: Need and impact.
160f.31 Evaluation criterion: Objectives.
160f.32 Evaluation criterion: Plan of operation.
160f.33 Evaluation criterion: Applicant's commitment to educational equity for women.
160f.34 Evaluation criterion: Staff qualifications.
160f.35 Evaluation criterion: Innovative approaches.

Authority: Title IX, Part C, of the Elementary and Secondary Education Act of 1965, as amended by the Education Amendments of 1978, Pub. L. 95–561, 92 Stat. 2298–2301 (20 U.S.C. 3341–3348).

Subpart A—General

§ 160f.1 Women's Educational Equity Act Program: Purpose.

The purpose of the Women's Educational Equity Act Program is to award grants to—

(a) Promote educational equity for women in the United States; and

(b) Enable educational agencies and institutions to meet the requirements of Title IX of the Education Amendments of 1972 (relating to nondiscrimination on the basis of sex in Federally assisted education programs).

(20 U.S.C. 3341(b))

§ 160f.2 Eligible applicants.

Public agencies, nonprofit private agencies, organizations, and institutions—including student and community groups—and individuals are eligible to receive grants.

(20 U.S.C. 3342(a))

§ 160f.3 Regulations that apply to the Women's Educational Equity Act Program.

(a) The following regulations apply to the Women's Educational Equity Act Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Part 160f.

(b) If any provision in other regulations conflict with any provision in this part, the provision in this part applies.

(20 U.S.C. 1221e–3(a)(1))

§ 160f.4 Definitions.

"Act" means the Women's Educational Equity Act of 1978.

"Council" means the National Advisory Council on Women's Educational Programs established under section 936 of the Act.

"Discrimination on the basis of sex" means the denial of opportunity, privilege, role, or reward on the basis of sex, regardless of whether that denial is prohibited by law.

"Educational equity for women" means—

The elimination in educational institutions, programs and curricula of discrimination on the basis of sex and of those elements of sex role stereotyping and sex role socialization that prevent full and fair participation by women in educational programs and in American society generally;

The responsiveness of educational institutions, programs, curricula, policymakers, administrators, instructors, counselors, and other personnel to the special educational needs, interests, and concerns of women that arise from inequitable educational policies and practices; and

The elimination of stereotyping by sex, so that both men and women can choose freely among and benefit from opportunities in educational institutions and programs with limitations determined only by each individual's interests, aptitudes, and abilities.

"Sex role stereotyping" means attitudes and actions that reflect assumptions that because females or males share a common gender, they also share common abilities, interests, values, and roles.

"Title IX" means Title IX of the Education Amendments of 1972. (Pub. L. 92–318).

(20 U.S.C. 3341–3348)

§ 160f.5 Equity in education.

A project must be designed to advance equity for women in education and may address issues of women's rights only within education.

(20 U.S.C. 3341(b))

§ 160f.6 Equity for all women: Diverse approaches.

(a) A project that proposes to address the needs of all women shall address the diverse needs of racial and ethnic minority women, disabled women, women of various socio-economic and geographical backgrounds, and women of various age groups.

(b) A project may focus on the particular needs of women from one or more of these groups.

(c) A grantee shall use approaches to the achievement of educational equity appropriate for the groups on which the project focuses.

(20 U.S.C. 3341(b))

§ 160f.7 Participation by men: Nondiscrimination.

Nothing in these regulations prohibits men and boys from participating in any project or activity funded under this part.

(20 U.S.C. 3343(b))

§ 160f.8 Evaluation.

(a) In addition to the requirements in 45 CFR 100a.590–592 (EDGAR) a grantee shall cooperate with the Council in fulfilling its mandate to evaluate projects assisted under the Act.

(b) Before making an award, the Commissioner requires an applicant to submit a detailed expansion of the evaluation plan submitted with the application, unless the application contained a detailed plan that the Commissioner approves without changes.

(20 U.S.C. 3343(a)(3), 3347)

§ 160f.9 Indirect costs.

The provisions governing indirect costs in 45 CFR 100a.560–568 (EDGAR) apply. Individuals may not receive indirect costs.

(20 U.S.C. 1221e–3(a)(1))

160f.10 Allowable costs.

The Commissioner makes funds available only to pay costs that are directly related to the operation of an approved project.

(20 U.S.C. 3342(a))

160f.11 Payments for training and for participation in the testing of materials and programs.

(a) *General.*

(1) The Commissioner allows the payment of stipends, travel costs, and child care costs to persons who participate in training provided under a grant and to persons who participate in field testing of materials and programs developed under a grant.

(2) The Commissioner approves these payments only if the applicant or grantee demonstrates that the payments are necessary to achieve the objectives of the project.

(3) Participants in training or in field testing activities may receive stipends only if they are not otherwise paid for the time during which they participate in the training or field testing.

(b) *Stipends for short-term training and for testing materials and programs.* (1) Short-term training is part-time or full-time training with a duration of less than one academic year.

(2) *Educational personnel.* Payments to educational personnel may be at the rate of up to $30 for each full day of participation, up to $150 a week. For days involving fewer than 5 hours of attendance, payments may be at the rate of up to $6 an hour, subject to the weekly limit of $150. However, if participating educational personnel are covered by a collective bargaining agreement in which the minimum hourly rate for an individual is more than $6 an hour, they may be paid at the rate provided under the agreement.

(3) *Non-educational personnel.* Payment to non-educational personnel, such as parents, students, and school bus drivers, may be made at rates that are not lower than the current Federal minimum wage rate nor higher than the rate for educational personnel.

(c) *Reimbursement for substitutes.* (1) If an educational agency pays teachers or other educational personnel to participate in short-term training or field testing activities and must hire substitutes for those personnel, the grantee may use funds to reimburse the agency to pay these substitutes.

(2) Rates for substitutes may not exceed the rates set out in paragraph (b)(3) of this section.

(3) A grantee may pay either a stipend to a participant, or a reimbursement for the hiring of a substitute for that participant, but may not pay both.

(d) *Stipends for long-term training.* (1) Long-term training is full-time or part-time training with a duration of at least one academic year.

(2) Stipends for participants in long-term training may not exceed $2925 for a nine month academic year or $3900 for a twelve month academic year.

(e) *Tuition and fees.* The Commissioner makes funds available to cover the costs of tuition and fees for participants in a grantee's long-term training project if the grantee demonstrates that payment of these costs is necessary to achieve the objectives of the project.

(20 U.S.C. 3342(a))

Subpart B—Projects of General Significance

160f.20 Authorized activities.

(a) Grants may support demonstration, developmental, and dissemination activities that promote educational equity for women and girls at any level of education, including preschool, elementary and secondary education, higher education, and adult education.

(b) Types of authorized activities include:

(1) The development and evaluation of curricula, textbooks, and other educational materials.

(2) Model training programs for educational personnel.

(3) Research and development projects.

(4) Guidance and counseling activities, including the development of nondiscriminatory tests.

(5) Educational activities to increase opportunities for adult women, including continuing educational activities and programs for underemployed and unemployed women.

(6) Expansion and improvement of educational programs and activities for women in vocational education, career education, physical education, and educational administration.

(c) A project must have national, statewide, or general significance.

(20 U.S.C. 3342(a))

§ 160f.21 Types of awards.

(a) *General Grants.* The Commissioner may award a general grant for demonstration, developmental, or dissemination activities—at any level of education—designed to promote educational equity for women.

(b) *Small Grants.* The Commissioner may award a small grant, not to exceed $25,000, to support an innovative approach to educational equity for women.

(c) *Contracts.* The Commissioner may award a contract for a particular purpose to promote educational equity for women in accordance with the requirements of the Act and 41 CFR Chapters 1 and 3.

(20 U.S.C. 3342(a))

§ 160f.22 Program priorities—General.

(a) The Commissioner establishes priorities for general grants to ensure that available funds are used for projects that are likely to achieve the purpose of the Act most effectively. The priorities appear in §§ 160f.23–160f.27.

(b) Each year, the Commissioner selects one or more of the priorities and allocates funds to each selected priority.

(c) Each year in the application notice, the Commissioner announces the selected priorities and the approximate amount of funds allocated to each priority.

(d)(1) Applicants may submit applications under one or more selected priorities. Applicants must identify the priorities under which they wish to compete in their applications.

(2) Applications under a priority compete against other applications under that priority for funds allocated to the priority.

(e)(1) An applicant may propose a project that is not under a priority, but is within the scope of the authorized activities described in § 160f.20. These applications compete for funds not allocated to any priority.

(2) If an applicant fails to identify a priority, the application competes with other applications that are not under a selected priority.

(f)(1) Each year the Commissioner may select one or more of the priorities establised for general grants to apply to small grants.

(2) In any year that the Commissioner establishes priorities for small grants, the procedures in paragraphs (b) through (e) of this section apply.

(20 U.S.C. 3345)

§ 160f.23 Priority for model projects on title IX compliance.

(a) The Commissioner gives priority to applications for the development of model programs and materials to enable educational agencies and institutions to meet the requirements of Title IX.

(b) The purpose of this priority is to develop a variety of models for use by local educational agencies and others that are eligible to apply for grants to conduct projects of local significance under section 932(a)(2) of the Act.

(c) Throughout the development and testing of model programs and materials, a grantee shall attempt to address the problems that local educational agencies and other users might have in implementing the models.

(d) An applicant may propose to develop models for one or more types of users, such as local educational agencies, State educational agencies, institutions of higher education, or community groups.

(e) An applicant may propose to develop models to address one or more Title IX issues.

(f) An applicant may propose activities which address areas not covered by Title IX, such as textbooks, if these activities are directly related to other activities designed to meet the requirements of Title IX.

(g) An applicant may focus on one or more groups, such as counselors, teachers, students, parents, principals, faculty, administrators, athletic directors, or deans.

(20 U.S.C. 3345)

§ 160f.24 Priority for model projects on educational equity for racial and ethnic minority women and girls.

(a) The Commissioner gives priority to applications for projects that focus on educational equity for women and girls who are members of racial and ethnic minority groups.

(b) The purpose of this priority is to address issues of double discrimination, bias, and stereotyping on the basis of sex and race or ethnic origin.

(20 U.S.C. 3345)

§ 160f.25 Priority for model projects on educational equity for disabled women and girls.

(a) The Commissioner gives priority to applications for projects that focus on educational equity for women and girls who are disabled.

(b) The purpose of this priority is to address issues of double discrimination, bias, and stereotyping on the basis of sex and disability.

(20 U.S.C. 3345)

§ 160f.26 Priority for model projects to influence leaders in educational policy and administration.

(a) The Commissioner gives priority to applications for model projects designed to increase commitment to Title IX compliance and to educational equity for women among individuals and organizations that affect education policy.

(b) The purpose of this priority is to encourage institutional change by assisting policymakers, administrators, and organizations to take positive steps to ensure Title IX compliance and educational equity for women.

(c) A project may focus on individuals responsible for policy making and administration of educational institutions, such as local educational agency or university administrators, school board members, or members of boards of trustees.

(d) A project may focus on organizations that influence educational policy and practice, such as professional associations, student organizations, parent-teacher associations, or labor unions.

(20 U.S.C. 3345)

§ 160f.27 Priority for model projects to eliminate persistent barriers to educational equity for women.

(a) The Commissioner gives priority to applications that address persistent barriers to achieving educational equity. Projects may focus on barriers that have received little attention in the past. Projects may also focus on barriers that past efforts have been unsuccessful in reducing.

(b) An applicant may propose to develop and demonstrate new approaches, or approaches that have not been tried in a particular area, that have the potential for substantial success but also have few guarantees of success.

(c) Projects may focus on one or more issues related to persistent barriers to the achievement of educational equity for women.

(d) An applicant shall demonstrate in its application the significance of the issue to the achievement of educational equity for women and the persistence of the barrier to be addressed.

(20 U.S.C. 3345)

§ 160f.28 Award decisions.

(a) The Commissioner prepares a rank ordering of the applications under each selected priority, and of those under no priority, on the basis of—

(1) The evaluation criteria in §§ 160f.30–160f.34, in the case of general grants; or

(2) The evaluation criteria in §§ 160f.30–160f.35, in the case of small grants.

(b) The Commissioner selects projects on the basis of the following:

(1) The projects' quality based on the evaluation criteria.

(2) The need for projects that collectively—

(i) Address the diverse needs of women among various population groups;

(ii) Address all levels of education, including preschool, elementary and secondary education, higher education, and adult education;

(iii) Use a variety of strategies for addressing needs; and

(iv) Include a variety of grantees, such as community, student and women's organizations, including those that have a substantial membership of minority or disabled women.

(3) The need to avoid duplication of projects that have already been funded.

(4) The need for geographic distribution of projects throughout the Nation.

(20 U.S.C. 3345)

§ 160f.29 Evaluation criteria.

The evaluation criteria in §§ 160f.30–160f.34 apply to an application for a general grant. The evaluation criteria in §§ 160f.30–160f.35 apply to an application for a small grant. The number of points awarded for each criterion depends on how well the application addresses all the factors under the criterion. The total possible score for a general grant application is 100 points. The total possible score for a small grant application is 105 points.

(20 U.S.C. 3345)

§ 160f.30 Evaluation criterion: Need and impact. (24 points)

The Commissioner determines the extent to which:

(a) The proposed project focuses on needs that are central to the purpose of the Act. (9 points)

(b) The applicant documents the significance of the needs addressed by the project. (7 points)

(c) The applicant shows knowledge of similar projects in the subject area and shows how this project makes a distinct contribution. (4 points)

(d) The model program, product, or results of the proposed project has national, statewide, or general significance to the achievement of educational equity for women. (4 points)

(20 U.S.C. 3345)

§ 160f.31 Evaluation criterion: Objectives. (16 points)

The Commissioner determines the extent to which:

(a) The proposed project establishes objectives which are likely to meet the identified needs. (8 points)

(b) The proposed project describes a realistic approach to meeting the objectives. (8 points)

(20 U.S.C. 3345)

§ 160f.32 Evaluation criterion: Plan of operation. (40 points)

The Commissioner determines the extent to which:

(a) The strategy and activities proposed to implement the projects are likely to accomplish the project's objectives successfully. (8 points)

(b) The applicant plans to develop the project in cooperation with representative groups relevant to the project's success, such as potential participants, community representatives, women's groups, students, key administrators, teachers, or faculty. (7 points)

(c) The applicant demonstrates that the project will address or can be adapted to address the educational equity needs of racial and ethnic minority group women. (8 points)

(d) The applicant sets out an effective management plan including appropriate resource allocation, realistic schedules, and a sufficient amount of time to be spent on the project by the proposed staff members. (8 points)

(e) The applicant describes an effective general plan for evaluation. (3 points)

(f) The budget and narrative show that proposed costs are reasonable in relation to the objectives and scope of the project. (6 points)

(20 U.S.C. 3345)

§ 160f.33 Evaluation criterion: Applicant's commitment to educational equity for women. (10 points)

(a) The Commissioner determines the extent to which the applicant demonstrates its commitment to educational equity for all women, including racial and ethnic minority women and disabled women.

(b) Among the factors the Commissioner considers in determining the applicant's commitment to educational equity for all women, are—

(1) The applicant's staffing pattern, with emphasis on employment of women in positions in which they have been underrepresented;

(2) The applicant's recruiting methods; and

(3) The applicant's other efforts to ensure educational equity for all women.

(20 U.S.C. 3345)

§ 160f.34 Evaluation criterion: Staff qualifications. (10 points)

(a) The Commissioner determines the extent to which:

(1) The project director has the qualifications and capability to conduct the project successfully. (6 points)

(2) The staff has the qualifications and capability to implement the project successfully. (4 points)

(b) In evaluating the qualifications and capability of the project director and staff, the Commissioner considers—

(1) Formal educational training;

(2) Employment or volunteer experience;

(3) Experience in designing, managing, or implementing similar projects; and

(4) Experience in addressing issues of women's educational equity in various contexts and settings, such as community groups.

(20 U.S.C. 3345)

§ 160f.35 Evaluation criterion: Innovative approaches. (5 points)

The Commissioner considers the extent to which the applicant for a small grant demonstrates how the project uses a new or untried approach to achieving educational equity for women in a particular area.

(20 U.S.C. 3345)

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Thursday
April 3, 1980

Part XI

Department of Health, Education, and Welfare

Office of Education

Arts Education Program

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

45 CFR Parts 160g, 161c

Arts Education Program

AGENCY: Office of Education, HEW.

ACTION: Final Regulations.

SUMMARY: These final regulations authorize grants and contracts to State educational agencies (SEAs), local educational agencies (LEAs), and other nonprofit public and private agencies, organizations, and institutions for programs that strengthen the arts in elementary and secondary education.

EFFECTIVE DATE: These regulations are expected to take effect 45 days after they are transmitted to Congress. Regulations are transmitted to Congress several days before they are published in the **Federal Register**. The effective date is changed by statute if Congress disapproves the regulations or takes certain adjournments. If you wish to know the effective date of these regulations, call or write the Office of Education contact person.

FOR FURTHER INFORMATION CONTACT: Harold Arberg, Director, Arts and Humanities Staff, U.S. Office of Education, 400 Maryland Avenue, S.W., Mail Stop 113, Washington, D.C. 20202. Phone: 202–472–7793.

SUPPLEMENTARY INFORMATION: Proposed regulations published in the **Federal Register** June 18, 1979 at 44 FR 35186 contain background information on legislative and policy changes in the program and how the regulations are intended to work.

Summary of Comments and Responses

A 60-day public comment period followed publication of proposed regulations in the **Federal Register** (June 18, 1979) at 44 FR 35186. Most responses gathered during this period supporting proposed strategies to meet the new eligiblility provision in the law. Some commenters requested clarification of funding procedures, priorities, and program strategies. A few suggested specific changes in the regulations. About one-half of the respondents commented on three new regulation features—cost-sharing requirements, anticipated larger funding awards, and lack of special emphasis on handicapped children (which was part of the former regulation).

Comments that altered the proposed regulations are discussed in Section A below; other comments requiring clarification or explanation follow in Section B.

A. Comments Resulting in Change

Section 161c.4 Definition of handicapped children.

Comment. A number of commenters asked that the definition of handicapped children that was part of the original regulations also be included in the new regulations.

Response. The definition has been restored to the new regulations to guide applicants in designing programs to serve all children and to provide special consideration to the needs of handicapped children.

Section 161c.10 Elements of cooperation.

Comment. One commenter mentioned that the legislation speaks of "arrangements with public and private cultural organizations" which, in the opinion of the commenter, are not the same as the educational agencies and community resource groups referred to in this section of the regulations.

Response. This section has been altered to include the wording in the law as well as the other terms. "Educational and community groups" were included to promote flexible and realistic consideration of area resources which might help build or strengthen the arts in education. Available arts resources, particularly for rural applicants, may be public service organizations—for example, transportation services for the elderly, factories, and churches—which are not ordinarily viewed as "cultural."

Section 161c.23 and 161c.44 Participation of private school children.

Comment. Several commenters suggested specific language for inclusion of private school children, as required by the Act.

Response. Both §§ 161c.23 and 161c.44 now address requirements for SEAs and LEAs concerning participation by private school children. Appropriate EDGAR provisions are referenced.

Section 161c.32 Criteria for evaluation of applicants

Comment. A number of commenters asked that the criterion encouraging consideration of the special populations such as the handicapped, gifted, and underprivileged be worth 10 points, as in the former regulations.

Response. This change has been made. However, to maintain the 100-point total for criteria, weight of the dissemination criterion has been reduced 5 points. (See § 161c.32(h) and discussion on this point under Section B.)

Comment. A number of commenters felt that larger grants contemplated by the new regulations would discourage applicants and discriminate against poor and rural areas.

Response. A new provision has been added to clarify intent of the regulations in §161c.31, item (b). The regulations do not specify either the size or number of awards, so applicants have flexibility in proposing project funding levels. During the past four years awards were *limited* to $10,000 or less for small planning or "seeding" projects. Applicants may still propose a project at this level; however, some applicants are now ready to proceed beyond the *seed money* stages. Cost-sharing will result in budgets and projects of varying size, depending on local resources available and project needs.

Section 161c.41 Ongoing evaluation activities

Comment. Several commenters questioned the inclusion of this provision which is not mandated by the Act and cited potential paperwork burden on State and local education agencies. One commenter questioned the limit of 10 percent on outside evaluation; one objected to the inclusion of collection of data on teacher achievements.

Response. Wording has been changed to clarify the intent that information will be gathered by each project for its own management purposes, not to generate statistics and paperwork for submission to the Federal program. The provision was included to encourage grantees to develop ongoing evaluation to assist in program planning, improvement, and justification. Information and project documentation may help (1) assure that steps are being taken which will lead to project improvement and success; (2) develop and change strategies; and (3) alter the course of a program.

Outside evaluation is limited to 10 percent to build ongoing strengths into each project which might not otherwise result if the project were to employ only outside experts or teams to provide analysis and evaluation.

Section 161c.42 Funding

Comment. Several commenters requested clarification on sources of cash matching, specifically, whether State funds could be included in a project's budget contribution.

Response. A change has been made in the regulation to clarify program intent; however, the section does not *require* "cash" as part of an applicant's share of project costs. In addition, a new paragraph, item § 161c.42(b)(2), permits matching with Federal funds allocated to States, if an applicant chooses to

make these funds part of a project contribution.

In addition to the above changes, typographical, editorial, and technical changes have been made.

B. Response to Other Comments

The following comments did not result in changes in the regulation either because they were beyond the authority of the Act or concerned matters already addressed in the regulations. Commenters are referred to the proposed regulations, which present the basis and rationale for change in the regulations. A number of comments pertained to administrative operation of the program; however, only comments considered to be regulatory issues are included in this section.

Informal questions and comments from a May 30, 1979, public meeting are included, even though this meeting did not occur during the official 60-day comment period.

Section 161c.1 Arts Education Program

Comment. One commenter inquired as to why the wording in this section did not quote the law.

Response. The wording in the law provides the definition of an "arts education program" in § 161c.4 of the regulations. This section simply indicates that funds are available for projects at the elementary and secondary levels of education.

Section 161c.2 Eligible parties

Comment. Several commenters suggested additional categories and subcategories of nonprofit agencies, organizations, and institutions (such as professional artists, teachers and arts educators, State training schools and community-based alternative education programs).

Response. The paragraph lists a series of examples, including those specifically mentioned in the law, and a few illustrative additional categories. The list is not intended to be exhaustive. Commenters are referred to the law, the background in the proposed regs, and the EDGAR definition of "nonprofit".

Section 161c.8 Program elements

Comment. One commenter felt that the comprehensive approach detracts from teaching the basic fundamentals in each discipline; one questioned the inclusion of the specific four art forms; several commenters felt the elements sacrificed "appreciation" in favor of "skills."

Response. The regulations were not designed to supplant the efforts of LEAs and SEAs in the discrete arts; the program is designed to strengthen, not replace, existing arts programs. In a comprehensive arts education program the arts are taught separately and in relation to each other; they may also be combined with other curriculum subjects. All students are exposed to all arts through integrated arts courses, and the arts are infused into various subject areas, in addition to being offered as elective courses. Students gain skills as well as understanding in, and appreciation of, various arts.

Involvement of all students in a school building in the spectrum of the arts—including at least music, drama, visual arts, and dance—was a central feature of the regulation developed when Congress created the Arts Education Program in the Education Amendments of 1974. All awards made over the past four years went only to SEA and LEA programs which addressed at least these four art forms. This comprehensive arts approach is well integrated into the program's history.

Section 161c.8 states that each project must be designed to "provide opportunities for all students * * * to acquire skills *and understanding* in and through several arts media * * *." (*Emphasis* added.) The term "understanding" implies aesthetic awareness and appreciation of the arts, and the two terms are of equal importance. For more background on this concept, see original regulations implementing Sec. 409 of Pub. L. 93-380.

Section 161c.9 Funding categories

Comment. One commenter inquired why, since the law does not specify it, the Commissioner reserves grants in State, urban, and rural categories.

Response. The "reservation" provision was introduced in the former regulation to ensure that States do not compete with local applicants for funds and, extending this technique to the new regulation, that both urban and rural applicants will be funded. Neither this reservation provision nor the definitions of "urban or large community", and "rural or small community" were intended to exclude any applicant from funding. Rather, the intent is to ensure that all applicants have an equal chance to compete for funds. There is flexibility so that, for example, a small community located on the fringe of a large standard metropolitan statistical area, and therefore "isolated", could apply for funds under the rural category rather than the urban category, but not under both. The demand each year warrants funding in each category.

In the proposed regulations, this section was a provision of § 161c.31. It now constitutes a new section, § 161c.9, which establishes that projects in all three categories—State, urban, and rural—will be funded.

Section 161c.10 Project advisory committees

Comment. One commenter inquired as to why advisory committees were required, since the law did not mandate their formation; others commented on committee composition, ranging from suggestions that the committee be more "open-ended" to suit the individual projects to suggestions for specific and narrowly defined committees. One commenter asked that at least one teacher be included on each committee.

Response. The regulation implementing the original program authorized under Section 409 of the Education Amendments of 1974 required that an advisory committee be established for each project funded. At the State level, the provision facilitated the organization of 50 Alliance for Arts Education Committees that now form a national network for information sharing, technical assistance, and review. At the local level, advisory committee members provided access for schools to the universities, museums, theaters, arts councils, and other cultural resources in rural and urban communities.

The regulations are intended to promote cooperation between the formal education system and the nonprofit public and private agencies, organizations, and institutions, which are now eligible for the first time to apply for funds. Advisory committees, which provided the links between schools and cultural resources in projects funded over the past four years, are again vital to collaboration on programs to "establish and conduct programs in which the arts are an integral part of elementary and secondary school curricula."

"Project advisory committee" has not been formally defined in § 161c.4 in order to allow wide diversity in composition. The statement was intended to suggest the types of people which *might* be represented, but in no way mandates the makeup of each committee.

Section 161c.9 & 10 Urban-rural categories

Comment. One commenter inquired as to why a distinction is made between urban and rural projects and why, in the urban category, minimum numbers of schools served and participating organizations are specified.

Response. The urban-rural distinction is an outgrowth of experience over the past four years with the original

program, which separated State and local applicants. In the "local" category, rural applicants often could not compete with large city school districts that had access to experienced proposal writers and Federal project coordinators. Each year proposal reviewers suggested the urban-rural distinction as a way of equalizing funding opportunities, however limited. Many rural areas may need "seed" money for planning or start-up; many urban school districts are ready to mount demonstration projects at various funding levels. The urban-rural project categories also provide guidance for others wishing to replicate or creatively adapt models of similar size and characteristics.

Urban projects must serve a minimum number of five cooperating schools to encourage development of a network of schools rather than a single program in only one school. The requirement encourages urban areas to design systems that reach as many children as possible. Funds and services concentrated on one school often prove too expensive to replicate or even maintain after Federal funding stops. Urban projects must include a minimum of three nonprofit, nonschool arts resources.

Comment. Several commenters requested an additional category for funding regional or interstate projects.

Response. The regulations do not prohibit either regional or interstate projects. Nonprofit organizations or educational service agencies serving several States might apply in any one of the three categories.

Section 161c.11 Eligible activities

Comment. Commenters suggested additions to the list of activities; some opted for definition of activities; several felt the list gives insufficient guidance as to the types of projects that would be considered eligible. One commenter recommended that funds support only the "excess costs" of planning, development, training and evaluation associated with the initiation of significant new programs.

Response. Neither the law nor the regulation prescribes specific activities to integrate the arts into elementary and secondary education. The list in § 161c.11 is not exhaustive, but includes categories of activities funded by the program over the past four years. Mandating specific activities is beyond the scope of the act. It is assumed that applicants will take the responsibility for program definition, strategies, and content, according to their specific needs and program priorities.

Section 161.12 Project duration

Comment. Some commenters felt that, in view of the expected appropriation level, multiple-year grants would stagnate the program. Some suggested the regulations be more specific about renewal funding; that grants be made for more than one year initially; that continuing grants be competitive with other applications. Others suggested the regulations establish decreasing funding percentages for second and third year funding. One commenter inquired whether a multi-year project would receive preference over a one-year project.

Response. We envision few multiple-year grants in view of the expected appropriation level. However, a few small planning projects funded under the rural category and strong urban and State models may show considerable promise of self-sufficiency or survival within a given time period. These may be supported with decreasing Federal dollar commitments for up to three years, on a case-by-case basis.

In view of the appropriation level, continued funding is expected to be the exception rather than the rule. Even under the competitive refunding of past years, only about one in 10 programs was "refunded." In view of the program's intent to give priority to new projects, the provision remains flexible, and each project will be considered individually.

Section 161c.21 Limitation on number of applications

Comment. One commenter felt that the limit of one grant per applicant could discriminate against urban LEAs.

Response. The provision was established in view of limited funds and collaboration strategies. This limit is reinforced by § 161c.31(b), which allows the Commissioner to add extra points to an application to achieve equitable distribution of projects; i.e., no more than one project per urban area.

Section 161c.22 Joint application

Comment. A commenter inquired whether it is possible for two contiguous school districts in different States to apply jointly and, if so, what the role of each State would be in reviewing the proposal.

Response. Two contiguous school districts in separate States may apply jointly. Each would be subject to review by its own State department of education.

Section 161c.24 State review of local applications

Comment. Several commenters requested that SEA review be a required part of Federal application review.

Response. State review is not mandated by law; however, the regulations provide that State education departments are given 30 days in which to comment on local applications. Reviewers have access to these comments and, to the extent that comments bear upon the published criteria, they may be taken into consideration by reviewers. Although State review is not mandated, a local applicant must send its application to the SEA.

Although State review is not "required," the feature was part of the original regulations. States have in the past used the opportunity to comment in a variety of ways. Some States ranked applicants; some provided equal endorsements for all applicants; some chose not to comment at all or commented on only several applications.

Section 161c.31 How the Commissioner judges applications.

Comment. A commenter suggested that a national committee of experts in arts education be appointed to advise the Commissioner.

Response. This is beyond the scope of the Act. It should be noted that the Federal Council on the Arts and the Humanities may serve as a coordinating and review body to review recommendations of application readers; however, all proposal reviews are ultimately the responsibility of the Commissioner and the staff of USOE. Both review panels representative of the field and the Federal Council may, at the Commissioner's request, be asked to make recommendations.

Section 161c.32 Criteria for evaluation of applications.

Comment. One commenter mentioned that program management was weighted more heavily in the criteria than program content and suggested that this be changed.

Response. The criteria judge a variety of approaches to arts education. Program content has traditionally been the responsibility of the State and local education agencies, and mandating criteria for specific program content is beyond the scope of the Act.

Comment. Commenters inquired as to why dissemination is included as a criterion. One commenter suggested specifications for dissemination awards.

Response. The weight of the dissemination criterion has been reduced from 10 to 5 points to take account of a 5-point increase in the handicapped criterion. However, dissemination is a crucial aspect of a Federal demonstration program with a $1.25 million appropriation. From a project's standpoint, the dissemination criterion encourages projects to consider ways of sharing information. Many project sites are unprepared to handle even the most simple inquiry. In the opinion of program staff, dissemination also provides a way to maximize the investment the Federal program makes in the development of ideas.

National dissemination channels presently include only a few arts projects, and various panels and ad hoc committees have cited "dissemination" as a priority for attention. A guidebook for project directors of arts education programs developed under contract with the Office of Education has been distributed to answer some questions on planning for dissemination; hence, the issue is of concern both under the former and the new regulations.

Grants may include activities which lead to the development of curricula and instructional materials; however, the purpose of the program is not the publication and dissemination of curricula or instructional materials. Dissemination of information about a funded project is part of a grant; dissemination contracts are not contemplated.

Section 161c.32(i) Results, end products, or outcome.

Comment. Several commenters ask why "new and innovative" is included in the criteria, and how it is defined.

Response. In view of expected funding ($1.25 million in fiscal year 1980), application reviewers will be looking for ways in which the Federal dollar can make an impact on projects and, in turn, projects can serve as models which promise new and innovative *approaches, methods,* or *materials.*

What is "innovative" in rural areas may be standard in urban programs; what is routine in a densely populated industrial State may be innovative in a sparsely populated agricultural State. The purpose of the criterion is to spur forward-thinking, carefully planned projects which will result in progress toward increasing the effectiveness of arts education.

Most projects will employ one or several standard activities from the "suggested" list in § 161c.11 of the proposed regulations; however, the program believes that potential for innovation or newness may be in strategies that give form and substance to these activities.

Comment. Commenters questioned the ineligibility of salaries for regular full-time instructional personnel as part of project in-kind or Federal share of costs. One commenter asked if cost exclusion extends to full-time teachers who are moved from teaching positions to work on a project.

Response. The intent of this section is to discourage the use of grant funds for regular teachers' salaries, which are a local responsibility. Salaries of faculty released in whole or in part from teaching responsibilities may be counted in cost-sharing, if substitutes are provided. The percentage of allowable teachers' salaries, including college or university faculty, will be proportionate to the time spent on a project.

In response to suggestions by the public and other interested parties, these final regulations contain provisions that were not in the notice of proposed rulemaking. These include (1) the statute governing this program and (2) the general selection criteria found in the Education Division General Administrative Regulations (EDGAR §§ 100a.202 through 100a.206). The purpose of incorporating these provisions into the final regulations is to enable applicants and grantees to understand better the requirements of this program without having to refer to these additional documents.

Citation of Legal Authority

The reader will find a citation of statutory or other legal authority in parentheses on the line following each substantive provision.

(Catalog of Federal Domestic Assistance No. 13.566, Arts Education Program)

Dated: February 14, 1980.

William L. Smith,

U.S. Commissioner of Education.

45 CFR Part 160g is redesignated as Part 161c and revised to read as follows:

PART 160g—[REDESIGNATED AS PART 161c]

PART 161c—ARTS EDUCATION PROGRAM

Subpart A—General

Sec.

161c.1 Arts Education Program.
161c.2 Eligible parties.
161c.3 Regulations that apply to the Arts Education Program.
161c.4 Definitions.

Subpart B—Kinds of Projects Assisted Under This Program

161c.8 Program elements.
161c.9 Funding categories.
161c.10 Elements of cooperation.
161c.11 Eligible activities.
161c.12 Project duration.

Subpart C—How To Apply for a Grant

161c.21 Limitation on number of applications.
161c.22 Joint application.
161c.23 Application requirements.
161c.24 State review of local applications.

Subpart D—How a Grant Is Made

161c.31 How the Commissioner judges applications.
161c.32 Criteria for evaluation of applications.

Subpart E—Conditions That Must Be Met by a Grantee

161c.41 Ongoing evaluation activities.
161c.42 Funding.
161c.43 Limitations on costs.

Authority: Title III, Part C, of the Elementary and Secondary Education Act, as amended by the Education Amendments of 1978, Pub. L. 95–561, 92 Stat. 2212 (20 U.S.C. 2961).

Subpart A—General

§ 161c.1 Arts Education Program.

The Arts Education Program provides Federal financial assistance for the arts in elementary and secondary education.

(20 U.S.C. 2961)

§ 161c.2 Eligible parties.

(a) State educational agencies (SEAs), local educational agencies (LEAs), and nonprofit agencies, organizations, and institutions may apply for grants.

(b) Nonprofit agencies, organizations, and institutions may include, but are not limited to, libraries, museums, theaters, arts councils and centers, colleges and universities, performing arts groups, and parent, youth, and civic organizations.

(20 U.S.C. 2962)

§ 161c.3 Regulations that apply to the Arts Education Program.

(a) *Regulations for grants.* The following regulations apply to grants under the Arts Education Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and 45 CFR Part 100c (Definitions).

(2) The regulations in this Part 161c.

(b) *Regulations for procurement contracts.* The Commissioner may award contracts to carry out the purposes of the Act. The regulations in this part, however, do not apply to procurement contracts under the Arts Education Program. These contracts are subject to:

(1) Federal and HEW procurement regulations in 41 CFR Chapters 1 and 3; and

(2) Requirements and criteria in particular requests for proposals (RFPs) published in the *Commerce Business Daily*.

(20 U.S.C. 1221e–3, 2962)

§ 161c.4 Definitions.

(a) The definitions in 45 CFR Part 100c of the Education Division General Administrative Regulations (EDGAR) apply to these regulations, including the following terms:

Budget
Commissioner
Equipment
Facilities
Local educational agency (LEA)
Nonprofit
Public
State
State educational agency (SEA)

(b) In addition, the following definitions apply in these regulations:

"Act" means the Arts in Education Act of 1978, enacted by Pub. L. 95–561 as Part C of Title III of the Elementary and Secondary Education Act of 1965.

"Arts" includes, but is not limited to, music, dance, drama, folk art, creative writing, architecture and allied fields, painting, sculpture, photography, graphic and craft arts, industrial design, costume and fashion design, motion pictures, television, radio, and tape and sound recording; the presentation, performance, execution, and exhibition of these art forms; and the study and application of the arts to the human environment. (20 U.S.C. 2961, 952(b), Pub. L. 89–209)

"Arts education program" means a program in which the arts are an integral part of elementary and secondary school education and that complies with § 161c.8 (Program elements).

"Handicapped children" means children who need special education and related services because they are mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, crippled, or otherwise health impaired, or have specific learning disabilities.

(20 U.S.C. 1401, 2962)

"Rural or small community," for purposes of this regulation, means a geographic area—other than a State—isolated from a metropolitan area. Cultural resources outside the schools are nonexistent or limited.

"Urban or large community," for purposes of these regulations, means a standard metropolitan statistical area, as defined in section 617(9) of the Elementary and Secondary Education Act.

Subpart B—Kinds of Projects Assisted Under This Program

§ 161c.8 Program elements.

The Commissioner awards grants to assist in establishing, conducting, or improving arts education programs. Each arts education program to be assisted under a project must be designed to—

(a) Provide opportunities for all students in the schools served by the project to acquire skills and understanding in and through several arts media, including, at least, dance, music, theater, and the visual arts; and

(b) Integrate these arts disciplines into the regular educational program of the schools served, rather than to include them on an extra-curricular or peripheral basis.

(20 U.S.C. 2961, 2962)

§ 161c.9 Funding categories.

The Commissioner may fund grants in each of the areas of (a) State projects, (b) urban or large community projects, and (c) rural or small community projects.

(20 U.S.C. 2962)

§ 161c.10 Elements of cooperation.

(a) An applicant shall develop—and describe in its application—a strategy to work collaboratively with State and/or local agencies, including SEAs and LEAs, schools, community organizations, resource groups, colleges and universities, arts organizations, or other public and private cultural organizations in the geographic area to be served by the proposed project.

(b) The applicant or grantee shall involve these groups in planning, conducting, and improving the arts education program proposed for funding.

(c) To be considered for a grant, an arts education project must meet the following minimum elements of cooperation in the funding category under which the applicant applies:

(1) *All projects.* (i) The project must have a project advisory committee consisting of members broadly representative of education, the arts, business, the professions, and parent and youth groups in the project area. A State applicant shall use the State arts education advisory committee (such as the State Alliance for Arts Education Committee) if one exists. A local applicant shall have on its project advisory committee some representation from the State arts education advisory committee, if one exists.

(ii) The advisory committee shall provide advice to assist with the project, in areas such as—

(A) Planning the project proposal;

(B) Meeting with project staff to review and comment on the progress of the project;

(C) Acquainting the community with the project; and

(D) Disseminating information regarding the project.

(2) *State projects.* The proposed project shall provide for interagency program planning and implementation with at least the SEA, the State arts education advisory committee, the State arts agency, a minimum of three LEAs in the State, and a variety of other State and local arts resource organizations, agencies, and institutions.

(3) *Urban or large community projects.* Project cooperation shall include, but need not be limited to—

(i) Serving the elementary and secondary students of a minimum of five cooperating schools located in one or more LEAs; and

(ii) Participation of a minimum of three arts and educational organizations, institutions, and agencies.

(4) *Rural or small community projects.* The project shall utilize available arts and community resources within the project area and may also use resources from outside the area.

(20 U.S.C. 2962)

§ 161c.11 Eligible activities.

Projects to make the arts an integral part of elementary and secondary curriculums may include, but are not limited to—

(a) Leadership training and staff development;

(b) Community awareness programs;

(c) Technical assistance;

(d) Material and curriculum development;

(e) Planning and coordination;

(f) Documentation and evaluation; and

(g) Dissemination.

(20 U.S.C. 2962)

§ 161c.12 Project duration.

(a) The Commissioner may approve a project for a maximum of three years in accordance with EDGAR §§ 100a.250 and 100a.251.

(b) Any continuation awards for budget periods after the first budget period of an approved multi-year project are made for decreasing amounts of funds. See EDGAR §§ 100a.253–100a.254 for provisions on continuation awards and extension of a project.

(c) In deciding whether or not to make a continuation award, the Commissioner considers the factors in § 100a.253 of EDGAR and the degree to which a project shows school-community cooperation and direct benefit to elementary and secondary arts

education, as evidenced by site visits, reports, project evaluation, and documentation.

(20 U.S.C. 1221e–3, 2962)

Subpart C—How To Apply for a Grant

§ 161c.21 Limitation on number of applications.

The Commissioner approves no more than one project application from an applicant in a fiscal year, whether or not that application is filed jointly with other applicants.

(20 U.S.C. 1221e–3, 2962)

§ 161c.22 Joint application.

A single application may be submitted by a group of eligible parties. Joint applications are subject to §§ 100a.127 through 100a.129 of EDGAR.

(20 U.S.C. 1221e–3, 2962)

§ 161c.23 Application requirements.

(a) An applicant must demonstrate in its application that the proposed project will meet the requirements in the following sections of these regulations:

(1) Program elements (§161c.8).

(2) Elements of cooperation (§ 161c.10).

(3) Cost-sharing requirements (§ 161c.42).

(b) In addition, in preparing a grant application, an applicant should address each criterion in § 161c.32.

(20 U.S.C. 1221e–3, 2962)

(c) *Special requirements for SEA or LEA applicants.* (1) An application from an LEA shall comply with the requirements in §§ 100a.138 through 100a.141 of EDGAR concerning an open meeting on the application.

(2) An application from a SEA or a LEA is subject to the requirements in section 302(b) of the Elementary and Secondary Education Act of 1965, as amended, concerning consultation with private school officials in developing the applications. The requirements are implemented in § 100a.650.

(20 U.S.C. 887e, 2942(b))

§ 161c.24 State review of local applications.

(a) The SEA, working with the State arts education advisory committee, may review and comment on local applications.

(b) If a State advisory committee does not exist, the SEA may assemble a committee for this purpose, using the elements for a project advisory committee in § 161c.10 as a guide.

(c) The local applicant shall send a copy of its application to the SEA, at the same time it sends the application to the Commissioner. The application must show that a copy was sent to the SEA.

(d) The SEA has 30 days after date of receipt of the application in which to review it.

(20 U.S.C. 1221e–3, 2962)

Subpart D—How a Grant Is Made

§ 161c.31 How the Commissioner judges applications.

(a) The Commissioner evaluates an application on the basis of the criteria in § 161c.32.

(1) The Commissioner awards up to 100 possible points for these criteria.

(2) The maximum possible score for each complete criterion is indicated in parentheses next to the heading of that criterion.

(b) To ensure geographic and programmatic diversity, the Commissioner may add up to 10 points to the score of an application that will contribute to—

(i) An equitable geographic distribution of arts education programs throughout the United States in both urban and rural areas;

(ii) A variety in types of projects funded that collectively demonstrate diverse approaches to the arts in elementary and secondary education; and

(iii) A range of funding levels, from small planning or development grants of $10,000 or less to larger awards for model or implementation projects.

(20 U.S.C. 2962)

(c) In selecting new or continuing applications the Commissioner may use the Federal Council on the Arts and the Humanities to review or comment on applications.

(1) The Commissioner may, in conjunction with the Council, identify applications that are within the priorities of other funding agencies on the Council.

(2) The Commissioner may decline to fund applications that are within other agencies' priorities.

(3) Applications may be considered for joint support by the Office of Education and other Federal agencies which are members of the Council.

(20 U.S.C. 1221e–3, 2962)

§ 161c.32 Criteria for evaluation of applications.

(a) *Needs assessment.* (10 points) The extent to which the applicant—

(1) Identifies and analyzes, objectively and comprehensively, the elementary and secondary arts education needs in the area to be served. In judging this criterion, the Commissioner considers the application's description of the geographic location to be served by the proposed project, including school population.

(2) Sets forth clear and measurable objectives that relate to the identified needs.

(b) *Coordination.* (25 points)

(1) Quality of the applicant's plan to mobilize and coordinate activities of all agencies, organizations, and institutions involved. In judging this criterion, the Commissioner considers the application's description of how and why each entity is cooperating in the project.

(2) Consistency with plans and/or activities previously carried out in arts education. In judging this criterion, the Commissioner considers how the project relates to the objectives of the State plan for the arts in education, if one exists.

(3) Extent of commitment and involvement of the SEA and LEAs in the proposed project.

(4) The extent to which the applicant makes effective use of the facilities and services of State and local agencies, institutions, and organizations, beyond the minimum requirements in § 161c.10.

(c) *Plan of operation.* (10 points)

(1) The Commissioner reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Commissioner considers—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective.

(v) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(vi) For grants made after October 1, 1980, if the applicant is a local educational agency or State educational agency, a clear description of how the applicant will provide an opportunity for participation of students enrolled in nonprofit private schools.

(d) *Quality of key personnel.* (7 points)

(1) The Commissioner reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Commissioner considers—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraph (d)(2)(i) and (ii) of this section will commit to the project.

(3) To determine the qualifications of a person, the Commissioner considers evidence of past experience in elementary and secondary arts education, as well as other information that the application provides.

(e) *Budget and Cost effectiveness.* (10 points)

(1) The Commissioner reviews each application for information that shows the project has an adequate budget and is cost effective.

(2) The Commissioner considers—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(f) *Evaluation plan.* (5 points)

(1) The Commissioner reviews each application for information that shows the quality of the evaluation plan for the project (see § 161g.41—Ongoing evaluation activities).

(2) The Commissioner considers whether the methods of evaluation are appropriate to the project and, to the extent possible, are objective and quantifiable.

(20 U.S.C. 1221e-3(a)(1), 3001, 3002)

(g) *Adequacy of resources.* (3 points)

(1) The Commissioner reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Commissioner looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(h) *Dissemination.* (5 points)

The Commissioner reviews each application for information that shows the adequacy of provisions for disseminating information about the project.

(i) *Results, end products, or outcome.* (15 points)

The extent to which the proposed project employs or will result in new and innovative approaches, methods, or materials of value in increasing the effectiveness of the arts in education.

(j) *Serving all students.* (10 points)

The extent to which the proposed project is designed to serve the needs of all students in the project area, including the handicapped, gifted, and underprivileged.

Subpart E—Conditions That Must Be Met by a Grantee

§ 161c.41 Ongoing evaluation activities.

(a) Throughout a project period, a grantee is responsible for evaluation acitivities that provide information for effective management of the project, including—

(1) Documentation of all activities for self-monitoring purposes; and

(2) Collection of statistics and data a grantee may feel are needed to assess progress and develop local support; for example, on students served, student and teacher achievements and attitudes, and relationships between other academic subjects and the arts.

(b) The Commissioner may require that some of the information in paragraph (a) of this section be included in project reports.

(20 U.S.C. 2962)

§ 161c.42 Funding.

(a) *OE share.* The Office of Education share is limited to a maximum of 50 percent of the costs of a project.

(b) *Project share.* The project share may include cash or in-kind contributions from the cooperating organizations, agencies, and institutions involved in the project.

(1) In-kind contributions may not include salaries of regular full-time instructional personnel.

(2) Cash contribution may include Federal funds that are awarded—

(i) through a State agency; or

(ii) under an authorized statute which expressly permits matching of Federal funds.

(20 U.S.C. 2962)

§ 161c.43 Limitations on costs.

(a) Federal funds may not be used for—

(1) Direct student financial aid; or

(2) Salaries for regular, full-time instructional personnel;

(3) Equipment worth more than five percent of the total grant amount;

(b) Not more than 10 percent of total project costs may be used for outside evaluation of the project.

(20 U.S.C. 2962)

[FR Doc. 80-9530 Filed 4-2-80; 8:45 am]

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Thursday
April 3, 1980

Part XII

Department of Health, Education, and Welfare

Office of Education

Metric Education Program

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

45 CFR Part 161b

Metric Education Program

AGENCY: Office of Education, HEW.

ACTION: Final regulations.

SUMMARY: The Commissioner of Education issues final regulations governing grants under the Metric Education Program as authorized by the Metric Education Act of 1978. These grants to State educational agencies (SEAs), local educational agencies (LEAs), and other public and nonprofit private agencies, organizations, and institutions are intended to encourage and support projects that prepare students to use the metric system of measurement with ease and facility as a part of the regular education program.

EFFECTIVE DATE: These regulations are expected to take effect 45 days after they are transmitted to Congress. Regulations are transmitted to Congress several days before they are published in the **Federal Register**. The effective date is changed by statute if Congress disapproves the regulations or takes certain adjournments. If you wish to know the effective date of these regulations, call or write the Office of Education contact person.

FOR FURTHER INFORMATION CONTACT: Dr. Floyd A. Davis, Program Manager, Metric Education Program (Riviere Building, Suite 835), 400 Maryland Avenue, S.W., Washington, D.C. 20202. Telephone: (202/653-5920).

SUPPLEMENTARY INFORMATION: The Metric Education Program, formerly authorized under Section 403 of Pub. L. 93-380 (Education Amendments of 1974) has been reauthorized by the Education Amendments of 1978, Pub. L. 95-561, Section 311.

On May 25, 1979 the Commissioner of Education published a notice of proposed rulemaking (NPRM) in the **Federal Register** (44 FR 30636). Interested persons were given forty-five days to comment on this notice. During this period, a number of comments were received. The paragraphs below summarize these comments and the Commissioner's response to them.

In response to the public comments on the NPRM, certain section numbers have changed (the NPRM section number appears in parenthesis following the new number).

Section 161b.1 What is the Metric Education Program?

Comment. One commenter suggested that the regulations should include a provision which ensures that grantees will consult with publishers in projects that involve the development of curricula or instructional materials.

Response. No change is made in these regulations. This requirement is contained in the Education Division General Administrative Regulations (EDGAR) and applies to all Office of Education Programs. The Metric Education Program is subject to EDGAR.

Comment. A commenter expressed a concern for the language used in § 161b.1 which describes the purpose of the Metric Education Program to be that of encouraging people to learn and use the metric system.

Response. A change is made in this section. The revision describes the purpose of the program as being that of encouraging educational agencies and institutions to develop programs to prepare students to use the metric system of measurement as a part of the regular school program.

Section 161b.2 Who is eligible to receive an award?

Comment. One commenter suggested that because the SEAs can reach more areas and people than can LEAs more funds should be given to SEAs. This would provide greater impact for metric education.

Response. No change is made. The Act does not distinguish between types of applicants (SEAs, LEAs, or other public and private nonprofit institutions) as to the amount of funds each applicant receives for a metric education project. The allowability of costs to support the activities described in the application coupled with the nature of the proposed project design are the bases upon which grant amounts are determined regardless of the applicant.

Comment. One commenter suggested that unsuccessful SEA applicants be given a predetermined minimum of funds, viz., $5,000 to support the development and refinement of their application.

Response. No change is made. This strategy is similar to the issuance of planning grants. The statutory authority does not provide for planning grants.

The Metric Education Program is discretionary in nature. The issuance of awards by the Commissioner is based on the outcome of a competitive process. Since all public and private nonprofit agencies and local educational agencies are eligible to submit applications for funding consideration, the provision of funds to unsuccessful SEAs to improve their applications would result in an unfair advantage for SEAs over other categories of eligible applicants. The Commissioner may provide a feasible level of technical assistance to any applicant in the preparation of their application(s). A national conference is generally held annually. This conference provides technical assistance to grantees including some training in application development. *Non-grantees may attend the conference on a space available basis and must pay their expenses.*

Section 161b.10 What categories of activities are supported?

Comment. Another commenter suggested that priorities be set to maximize the effective use of the U.S. Office of Education's limited (metric education) resources.

Response. No change is made. The Metric Education Program has supported metric educational opportunities and has achieved significant results. However, the Commissioner may, in any given year, emphasize one or more activities upon publication of a notice in the **Federal Register.**

Comment. One commenter felt that more emphasis should be placed on the dissemination of existing metric curricula and related materials rather than on developing new materials.

Response. A change is made in § 161b.10(a)(3) to make it clear that both new and existing instructional materials are covered. The Metric Education Program provides maximum flexibility in the designing of cost effective projects which are responsive to the assessed needs of the grantee's learner population(s). These needs might, in some cases, be met by disseminating existing materials, while in other cases it might be necessary to develop new materials. To the extent that the interest of cost-effectiveness can be accommodated by disseminating existing materials without compromising the needs of the learner population(s), the program encourages it. However, it is up to the grantee to determine the method that best meets the needs of its learner population.

On a national level, adequate effective dissemination of existing materials to educational institutions (including those isolated from national education trends) might be a very costly process.

Comment. One commenter suggested that funds "earmarked" for the "training of the parents of students and for developing metric education curricula for higher education", be used instead for teacher training or other "more productive" programs.

Response. A change is made in this section to eliminate the use of funds for training parents and other adults. However, no change is made with respect to redirecting funds to teacher

training. Funds are not "earmarked" for any particular type of activity. The Commissioner makes discretionary awards as a result of a competitive process. Awards may support any of the types of activities in § 161b.10—What categories of activities are supported? However, the Commissioner may in any given year emphasize certain of these activities listed in § 161b.10 upon publication of a notice in the Federal Register. For example, experience with the program may indicate a need for a particular type of activity such as teacher training. The Commissioner may, through a notice in the Federal Register, seek applications for grants to support this type of activity.

Comment. A commenter expressed confusion over the types of activities that can be supported under a procurement contract, since the regulations state that procurement contracts cannot duplicate activities carried out under grants.

Response. A change is made in § 161b.10(c) to clear up any possible confusion. The Federal Grant and Cooperative Agreement Act of 1977 (Pub. L. 95–224) requires a Federal agency to use a grant, procurement contract, or cooperative agreement, depending on the relationship between the Federal government and the recipient. In the case of contracts and grants, if the relationship is one where the principal purpose is to acquire property or services for the direct benefit of the government, a procurement contract must be used. However, if the principal purpose is one of support or stimulation authorized by the statute, a grant must be used. The activities in § 161b.10(a) are supported or assisted by grants. Procurement contracts may be awarded for activities such as technical assistance and other program supportive activities which are national in scope.

Section 161b.31 (§ 161b.30 of the NPRM) How does the Commissioner select a metric education project?

Comment. One commenter expressed a desire that the Metric Education Program encourage the dissemination of products produced at government expense as such products should be made available to anyone who wants to use them.

Response. No change is made. To the extent feasible, the Metric Education Program currently disseminates project products that can be easily duplicated. The staff, through technical assistance, is increasing its efforts to inform project directors of dissemination opportunities through the Educational Resources Information Center and the National Diffusion Network once specific requirements have been satisfied.

Comment. One commenter expressed a concern that to require the learner populations to participate in the planning of the various projects would be "punitive" to projects designed to serve elementary students because of the age of these students.

Response. The language in § 161b.31(f)(3), (§ 161b.30(c)(1)(iii) of the NPRM) is changed to require "feasible participation" by the learner population in the planning of projects. This means participation at a level that is appropriate to their age, experiences, and intellectual maturity. For example, this might include participation in pre-tests, the analysis of which can be used by educational personnel as a basis for identifying, designing, and implementing strategies and alternatives to meet the unique needs of the learner population. With respect to LEAs, the public must be given an opportunity to comment on the subject matter of the applications. In this way parents and other adults are given an opportunity to participate in the planning which reasonably represents and protects the best educational interests of the elementary students.

Comment. A commenter expressed a concern for teacher participation in planning inservice metric education training programs and in the development of metric education curriculum materials.

Response. No change is made. It is not felt that the Program should prescribe the specific areas of participation by teachers in planning activities. It is expected that a well planned project that effectively provides for the needs of the learner population and for staff development will have involved, at an appropriate level, participation of teachers in its development.

Comment. A commenter suggested that the evaluation procedures in § 161b.31 (§ 161b.30 of the NPRM) be changed to give points for providing for participation of children in nonprofit private schools in the metric education project.

Response. No change is made. Under Section 302 of the Elementary and Secondary Education Act, an award cannot be made to an SEA or an LEA for a metric education project, unless the Commissioner determines that the SEA or LEA: (1) Has consulted with nonprofit private school officials in developing the application and (2) Will provide an opportunity for private school children to participate in the project on a comparable basis with public school children. It is not a matter of giving a certain number of points to an application that provides for this participation. This is a basic requirement that must be met. Without it there can be no award. This requirement only applies to applications from SEAs and LEAs.

Section 161b.40 Are there restrictions on the types of costs that may be supported?

Comment. Several commenters suggested that stipends and dependency allowances be provided for educational personnel who receive training in metric education projects.

Response. No change is made. The provision of some staff development opportunities is within the purview of the various school districts. The Metric Education Act of 1978 provides that metric education will be taught "* * * as a part of the regular educational program". This is an applicant responsibility. In view of the fact that the provision of stipends would be very costly, it would seriously limit the metric educational opportunities for students throughout the nation. The program's appropriation is quite limited. It has been able to fund an average of only 10 percent of the applicants during each of the fiscal years that it has operated. The "no stipend" policy is consistent with the legislative intent for low cost metric educational activities.

Comment. One commenter expressed a concern that the acquisition of metric measurement apparatus out of grant funds was an inappropriate use of these funds.

Response. A clarifying change is made in § 161b.40(c) (§ 161b.40(b)(1) of the NPRM). Examples of types of apparatus are added to show that the intent is to include small, relatively inexpensive apparatus that is essential to the implementation of programs designed to prepare students to use the metric system. The acquisition of basic measurement educational equipment, supplies, and apparatus such as metric rulers, scales etc., is essential to the implementation of programs to prepare students to use the metric system of measurement. Measurement involves conceptual as well as manipulative skills. The acquisition of metric measurement materials and equipment is consistent with the legislative purposes to encourage and support programs to prepare students to use the metric system of measurement. It is also supportive of the effective implementation of metric instructional programs conducted by eligible and successful applicants that receive awards from the Commissioner. This is an experience-based program.

Section 161b.41 Must State and local educational agencies provide an opportunity for private school children to participate?

Comment. A commenter expressed concern that the regulations did not adequately provide for equitable treatment of students in nonprofit private elementary and secondary schools. In particular, the commenter suggested that a new section be added under Subpart E—"What conditions must be met by the grantee?" to clearly state the responsibilities for these students.

Response. A new § 161b.41—"Can private school children participate?" is added to delineate the responsibilities of SEAs and LEAs for providing for participation of private elementary and secondary school children in metric education activities under this program. In projects involving training of educational personnel, responsibility for providing an opportunity for private school personnel to participate in this training, is also clearly stated.

In case of an SEA or LEA, the regulations (§ 161b.41) require that the SEA or LEA (1) consult with nonprofit private school officials in developing its application and (2) provide an opportunity for private school children to participate in the proposed metric education activity on a basis comparable to that provided for public school children. These requirements are implemented in § 100a.650 and § 100b.650 through § 100b.663 of EDGAR.

Other Comments

Comment. One commenter expressed concern that a one-year award would not encourage long range planning.

Response. Project duration is not covered in these regulations. This is subject to requirements in § 100a.250 through § 100a.254 of EDGAR. The Commissioner generally approves a project period of not more than 12 months. Under certain conditions described in these provisions of EDGAR, a project period of up to 60 months may be approved. Continuation after the intitial 12 month period is, of course, also subject to the availability of funds and the Commissioner's approval of the rationale provided for the continuation of an existing project or as part of the original plan of operation submitted by the applicant.

Comment. Another commenter expressed a concern that provision for including metric educational opportunities for teachers, parents, and other adults in the regulations goes beyond the legislative intent to prepare students to use the metric system of measurement. The commenter felt that this would divert funds from the expressed purpose of preparing students to use the metric system.

Response. The Commissioner agrees with this concern. Several changes have been made in § 161b.1, § 161b.10 and § 161b.31 (§ 161b.30) of the NPRM) to focus the program on students in the regular educational program, rather than on parents, adults, and other members of the public. However, parents and adults may participate in metric training if they are students in a school's regular educational program.

Comment. A commenter expressed a view that beneficiaries of metric education efforts should be informed that it is not national policy to favor one measurement system over another, i.e., the metric system of measurement over the "standared system" of measurement.

Response. Sections 161b.1 and 161b.10(a) have been changed to make clear that the Metric Education Program complies with current national policy on the metric system of measurement. Conversion to the metric system of measurement is voluntary in the United States. While the national policy is that conversion is voluntary, there are a number of States that have taken official positions supportive of metric conversion. In some other States, timelines have been set for metric conversion in specifiic areas of activity, especially education. The Metric Education Program does not advocate the metric system over the "standard system" of measurement. Instead it provides support for activities that focus on metric education activities to help people who wish to learn to use the metric system. It cannot reasonably be predicted that the national metric policy will be static. Activities, therefore, supported under the Metric Education program include orientation sessions which convey a history of metric measurement, and the status of its development in the United States. Included is information on our Nation's policy on metric measurements.

Comment. One commenter felt that there should be less variation in the amount of grant awards for agencies within each category of eligibility. Policies which allow for extreme differences in these grant amounts serve to limit or deny opportunities to many individuals for access to programs designed to prepare them to use the metric system of measurement. The commenter felt that a categorical grant maximum should be established. Grant awards should not exceed 10 percent of the maximum grant amount for the applicable category of eligibility.

Response. No change is made. Some of the awards that the Commissioner makes support the implementation of projects whose activities are national in scope. Others support project activities that are statewide or multi-state in scope. Some awards are made for projects to be carried out by a group of eligible parties including a consortium or cooperative arrangements. The budgetary resources required to implement these projects will be greater than for project activities for a single school district or institution. For these reasons, there are often variations in the levels of funding for some projects.

The range of funding for projects will be included in the notice of closing date for transmittal of applications and will be published annually in the **Federal Register.**

Comment. One commenter suggested that the final regulations should include a prohibition against teachers participating in metric training or curriculum development activities under this program unless their own local school board or comparable authority had first initiated metric education in the school or schools under its jurisdiction.

Response. No change is made. The statute contains no such prohibition. This type of prohibition would encroach on academic freedom and the individual rights of educational personnel to pursue professional growth. The inclusion of metric education in school classrooms of the Nation—unless specifically prohibited by statute—does not violate the general goals, philosophy, and purposes of education.

Comment. One commenter suggested that the final regulations should include a provision prohibiting the promotion or advocacy of the use or adoption of the metric system through actitivities funded under the program.

Response. No change is made. From an administrative standpoint, it is hard to differentiate between the teacher's effort to motivate the student and advocacy or promotion of the metric system of measurement. Motivation of the student is consistent with accepted strategies for effective teaching. If the student is motivated to learn the metric system and, as a consequence, chooses to use the system it is a choice that the student can make because of the newly acquired skills. Inclusion of the provision suggested by the commenter might be subject to possible criticism as violating section 432 of the General Education Provisions Act (20 U.S.C. 1232a) that prohibits the Federal government from exercising any "direction, supervision, or control over the curriculum, program of instruction,

administration, or personnel of any educational institution, school, or school system * * *"

Comment. A commenter expressed concern that the phrases "performance-oriented approaches" and "project impact potential" were somewhat like education jargon and did not contribute to the goal of using simple and clear language in regulations.

Response. A change is made. These phrases have been eliminated from the definitions in § 161b.4. Since the terms appear only once in § 161b.31 (How does the Commissioner select a metric education project?), the substance of these definitions have replaced these terms in § 161b.31(h) (ii) and (iii) (§ 161b.30 (c)(3) (ii) and (iii) of the NPRM).

These final regulations also contain minor editorial and organizational changes.

In response to suggestions by the public and other interested parties, these final regulations contain provisions that were not in the notice of proposed rulemaking. These include (1) certain provisions of the statute governing this program and (2) the general selection criteria found in the Education Division General Administrative Regulations (EDGAR §§ 100a.202 through 100a.206). The purpose of incorporating these provisions into the final regulations is to enable applicants and grantees to undestand better the requirements of this program without having to refer to these additional documents.

Dated: February 11, 1980.

(Catalog of Federal Domestic Assistance Number 13.561 Metric Education Program)

William L. Smith,

U.S. Commissioner of Education.

The Commissioner redesignates Part 160a of the Code of Federal Regulations (CFR) as Part 161b and revises the regulations to read as follows:

PART 160a—[REDESIGNATED AS PART 161b]

PART 161b—METRIC EDUCATION PROGRAM

Subpart A—General

Sec.

161b.1 What is the Metric Education Program?
161b.2 Who is eligible to receive an award?
161b.3 What regulations apply to the Metric Education Program?
161b.4 What definitions apply to this program?

Subpart B—What Kinds of Projects does the Office of Education Assist Under This Program?

161b.10 What categories of activities are supported?
161b.11 What are the outcomes of an effective metric education project?

Subpart C—How Does One Apply for a Grant?

161b.20 What rules must be followed?

Subpart D—How Is A Grant Made?

161b.30 How does the Commissioner evaluate an application?
161b.31 What selection criteria does the Commissioner use?

Subpart E—What Conditions Must be Met By the Grantee?

161b.40 Are there restrictions on the types of costs that may be supported?
161b.41 Must State and local educational agencies provide an opportunity for private school students to participate?

Authority: Part B of Title III of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 95–561, 92 Stat. 2211 (20 U.S.C. 2951).

Subpart A—General

§ 161b.1 What is the Metric Education Program?

The Metric Education Program encourages educational agencies and institutions to develop programs to prepare students to use the metric system of measurement. Under this program, the Commissioner awards grants and procurement contracts for metric education projects to encourage the voluntary use of the metric system of measurement.

(20 U.S.C. 2951–2952)

§ 161b.2 Who is eligible to receive an award?

(a) The following are eligible to receive an award:

(1) State educational agencies (SEAs), local educational agencies (LEAs) and other public agencies and organizations,

(2) Public and private institutions of higher education (including junior and community colleges) and other private organizations; and

(3) Any two or more of the parties above.

(b) A grant can only be made to a public agency or nonprofit private organization or institution.

(20 U.S.C. 2952)

§ 161b.3 What regulations apply to the Metric Education Program?

The following regulations apply to the Metric Education Program:

(a) The Education Division General Administrative Regulations (EDGAR), Part 100a (Direct Grant Program) and Part 100c (Definitions);

(b) These regulations in this part 161b; and

(c) For procurement contracts, the applicable provisions of the Federal Procurement Regulations, 41 CFR Chapters 1 and 3.

(20 U.S.C. 2951–2953)

§ 161b.4 What definitions apply to this program?

(a) *Definitions in EDGAR.* The following terms used in these regulations are defined in Part 100c: Applicant, Application, Award, Commissioner, Elementary school, Local educational agency (LEA), Nonprofit, Nonpublic elementary or secondary school, Private, Project, Public, Secondary school and State educational agency (SEA).

(b) *Specific program definitions.* As used in these regulations—"Act" means the Metric Education Act of 1978, Part B of Title III of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 95–561 (Education Amendments of 1978).

"Adaptation" means the modification of a metric educational strategy or plan to meet the particular needs of a specific learner population.

(20 U.S.C. 2951–2952)

"Institution of higher education" (IHE) means an institution as defined in Section 1001 of the Elementary and Secondary Education Act of 1965, as amended.

(20 U.S.C. 3381)

"Interdisciplinary" means the involvement of two or more academic disciplines, for example, the involvement of disciplines that may include, but are not limited to, mathematics and science.

"Learner population" means the group intended to benefit from or to participate in a metric education project.

"Metric system" or the "Metric system of measurement" means the international system of units (SI) as interpreted or modified for the United States by the Secretary of Commerce. SI was established in 1960 by the General Conference on Weights and Measures under the Treaty of the Meter and includes the meter (length), Kilogram (mass), second (time), Kelvin (thermodynamic temperature), Ampere (electric current), candela (luminous intensity), and the mole (amount of substance.) The radian (plane angle) and the steradian (solid angle) are supplementary units of the system.

(20 U.S.C. 2951–2952)

Subpart B—What Kinds of Projects does the Office of Education Assist Under This Program?

§ 161b.10 What categories of activities are supported?

(a) *Metric education project grants.* To encourage the voluntary use of the metric system of measurement, funds are awarded for metric education projects. These projects may include but are not limited to the following types of activities:

(1) Training educational personnel to teach and carry out projects in the use of the metric system of measurement. This may include inservice and preservice training of teachers and other educational personnel.

(2) Developing an interdisciplinary metric curriculum.

(3) Developing and disseminating effective metric instructional materials (including existing materials).

(4) Developing, demonstrating, improving, expanding, continuing, or adapting metric education projects.

(5) Developing a statewide and multi-state metric education plan. This may include developing a master metric education interdisciplinary curriculum plan that sets forth metric education objectives, strategies, and activities for a variety of academic subjects which are taught in the schools of the local educational agencies.

(6) Developing metric education curriculum and instruction for use in institutions of higher education for purposes other than teacher training.

(7) Developing special strategies for supporting metric education projects in rural or isolated areas. This may include the use of mobile units (such as vans or other vehicles) to reach and provide metric instruction to persons in those areas.

(b) The Commissioner may, in any given year, select priorities for funding from one or more of the activities above upon publication of a notice in the **Federal Register.**

(c) *Procurement contracts.* The Commissioner may award procurement contracts under this program to support activities, usually national in scope, to meet the needs of the Metric Education Program. Requests for proposals are solicited for contracts in the Commerce Business Daily. The Commissioner does not award contracts for activities that duplicate activities that are typically conducted under a grant.

(20 U.S.C. 2952)

§ 161b.11 What are the outcomes of an effective metric education project?

A grantee receiving assistance under this part must demonstrate effective methods for—

(a) Improving the long-term capabilities of individuals to use and teach the metric system of measurement;

(b) Developing or adapting new techniques and approaches to meet the metric educational needs of the learner population(s);

(c) Identifying and using local and other resources for metric education purposes;

(d) Supporting new or existing metric educational activities of educational agencies and institutions;

(e) Continuing successful project activities after Federal funding is ended; and

(f) Evaluating the metric educational activities in meeting the project's objectives.

(20 U.S.C. 2952)

Subpart C—How Does One Apply for a Grant?

§ 161b.20 What rules must be followed?

The Commissioner only makes a grant to an eligible applicant that—

(a) Submits an application; and

(b) Complies with all procedural rules governing the submission of the application.

(20 U.S.C. 2953)

Subpart D—How is a Grant Made?

§ 161b.30 How does the Commissioner evaluate an application?

(a) The Commissioner evaluates an application on the basis of the criteria in § 161b.31.

(b) The Commissioner awards up to 100 possible points for these criteria.

(c) The maximum possible score for each complete criterion is indicated in parentheses at the end of that criterion.

§ 161b.31 What selection criteria does the Commissioner use?

(a) *Plan of operation.* (1) The Commissioner reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Commissioner looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(vi) For grants made after October 1, 1980, if the applicant is a local educational agency or State educational agency, a clear description of how the applicant will provide an opportunity for participation of students enrolled in nonprofit private schools. (20 points)

(b) *Quality of key personnel.* (1) The Commissioner reviews each application for information that shows the quality of the key personnel the applicant plans to use in the project.

(2) The Commissioner looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(3) To determine the qualifications of a person, the Commissioner considers evidence of past experience and training in fields related to the objectives of the project, as well as other information that the applicant provides. (14 points)

(c) *Budget and cost effectiveness.* (1) The Commissioner reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Commissioner looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project. (10 points)

(d) *Evaluation plan.* (1) The Commissioner reviews each application for information that shows the quality of the evaluation plan for the project. (See § 100a.590—Evaluation by the grantee.)

(2) The Commissioner looks for information that shows methods of evaluation that are appropriate for the

project and, to the extent possible, are objective and produce data that are quantifiable. (10 points)

(e) *Adequacy of resources.* (1) The Commissioner reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Commissioner looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate. (6 points)

(f) *Needs.* The Commissioner reviews each application for information that shows the extent to which the applicant—

(1) Provides for an effective response to the assessed metric education needs of the learner population;

(2) Focuses on enabling the learner population to acquire measurable skills for using the metric system of measurement; and

(3) Provides for the feasible participation by the learner population in planning project activities that contribute to their acquisition of measurable skills in using the metric system of measurement. (10 points)

(g) *Staff needs.* The Commissioner reviews each application for information that shows the extent to which the proposed project responds to staff development needs in metric education. (8 points)

(h) *Outcomes.* The Commissioner reviews each application for information that shows the extent to which the applicant—

(1) Contributes to the incorporation of metric educational activities and strategies into the regular educational program of the funded agency or institution;

(2) Contributes to metric education approaches that involve students in a sequence of problem solving activities that require concrete solutions and examples;

(3) Has a high potential for contributing to the cost effective adaptation, expansion, and replication of project strategies and activities in the regular educational programs of other agencies; and

(4) Includes a strategy for continuing support after Federal funding is ended. (12 points)

(i) *Dissemination.* The Commissioner reviews an application for information that shows the extent to which the applicant—

(1) Provides a clear description of a planned strategy (including mechanisms) for the dissemination of successful and promising metric education products and instructional strategies and practices which are developed and implemented by the project staff; and

(2) Provides a description of plans for non-participants to capitalize on the skills acquired by project participants. (10 points)

Subpart E—What Conditions Must Be Met by the Grantee?

§ 161b.40 Are there restrictions on the types of costs that may be supported?

(a) Allowable costs under a grant are subject to cost principles provided or referenced in §§ 100a.530 through 100a.535 of EDGAR.

(b) Funds may be used for the following types of travel:

(1) Travel by the project director or his or her designee to attend a national or regional conference sponsored by the Metric Education Program; and

(2) Travel by the project director or by the project's instructional staff to visit or to provide services at the grantee's project training site(s).

(c) Funds may be used for the purchase, replacement, and adaptation of metric measurement apparatus, e.g., metric measurement devices, scales, etc., and other instructionally essential metric supplies and materials if the Commissioner determines that they are necessary for carrying out the proposed metric education project. These costs are limited to 20 percent of the direct costs of the award.

(d) Funds may not be used for the provision of stipends, dependency allowances, substitute pay, or the purchase of textbooks that are not specifically for metric instruction.

(e) Funds may not be used by a private agency, organization or institution for the payment of costs of the regular instructional program.

(20 U.S.C. 5952)

§ 161b.41 Must State and local educational agencies provide an opportunity for private school students to participate?

(a) If an SEA or LEA receives a grant under this program, section 302 of the Elementary and Secondary Education Act requires that the agency provide an opportunity for participation by students enrolled in private elementary and secondary schools. EDGAR establishes the rules for their participation (See EDGAR § 100a.650).

(b) In SEA and LEA projects supporting the training of educational personnel, the grantee shall provide to educational personnel of private schools in the area served by the project, an opportunity to participate in this training on a basis comparable to that provided for educational personnel in the public schools.

(20 U.S.C. 2942(b), 2951–2953)

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Thursday
April 3, 1980

Part XIII

Department of Health, Education, and Welfare

Office of Education

Consumers' Education Program

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

45 CFR Part 161e

Consumers' Education Program

AGENCY: Office of Education, HEW.

ACTION: Final Regulations.

SUMMARY: The Commissioner of Education issues final regulations governing grants under the Consumers' Education Program as authorized by the Consumer Education Act of 1978. These grants to State and local educational agencies, institutions of higher education, and other public and private non-profit agencies, organizations, and institutions are intended to encourage and support projects that prepare consumers of all ages to function more effectively in the marketplace and in their roles as consumer-citizens. The final regulations simplify previous regulations.

EFFECTIVE DATE: These regulations are expected to take effect 45 days after they are transmitted to the Congress. Regulations are transmitted to the Congress several days before they are published in the **Federal Register.** If the Congress disapproves the regulations or takes certain adjournments, the effective date is changed by statute. To learn the effective date of these regulations, phone or write the contact person for the Office of Consumers' Education listed below.

FOR FURTHER INFORMATION CONTACT: Dr. Dustin W. Wilson, Jr., Director, Office of Consumers' Education (Room 807, Riviere Building), U.S. Office of Education, 400 Maryland Avenue, S.W., Washington, D.C. 20202. Telephone: 202–653–5983.

SUPPLEMENTARY INFORMATION: The Consumers' Education Program, formerly authorized under Section 811 of the Elementary and Secondary Education Act of 1965 has been reauthorized by the Education Amendments of 1978, Pub. L. 95–561. It is now Section 331 of the Elementary and Secondary Education Act.

The Commissioner published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on May 16, 1979 (44 FR 28758). Interested persons were given 45 days to comment on these proposed regulations. During this period a number of comments were received.

A major concern expressed in the comments involved the selection criteria of the Education Division General Administrative Regulations (EDGAR) which are referred to in § 161e.30 of the NPRM. It was felt that the EDGAR references were not sufficiently directed to the Consumers' Education Program. As a result, the selection criteria in § 161e.30 were revised to exclude any reference to the EDGAR criteria of the NPRM. Although the criteria in the final regulations remain substantially the same, the EDGAR criteria have been incorporated into the regulations so that each criterion is now specific to the Consumers' Education Program. It is no longer necessary to look outside of § 161e.30 for the selection criteria.

The paragraphs below summarize the comments and the Commissioner's responses to them.

Section 161e.1 What is the Commissioners' Education Program?

Comment. One commenter stated that the description of the Consumers' Education Program in § 161e.1 was too limiting and that it should be made consistent with the definition of Consumers' Education in § 161e.4.

Response. The Commissioner agrees with this comment. Sections 161e.1 and 161e.4 have been amended accordingly.

Section 161e.2 What types of agencies are eligible to receive awards?

Comments. Three commenters expressed fear that consumer and community agencies would be discouraged from applying for support because they would not recognize themselves as "non-profit, private organizations." Two commenters suggested that the term "consumer and community groups" be specifically included. One commenter suggested that the term "agencies or groups" appear in the section heading.

Response. The Commissioner agrees that these concerns are valid. Section 161e.2 has been amended to prevent any misunderstanding as to parties eligible for assistance under the Act.

Section 161e.4 What definitions apply specifically to this program?

Comment. Three commenters made recommendations for simplifying, clarifying, or adding to the definition of consumers' education in § 161e.4(a)(1)–(5). One commenter suggested an extensive revision, condensing the five parts of the definitions into three parts. Another commenter submitted a sample revised definition.

Response. The definition of consumers' education has been amended for clarity, specificity, and conciseness.

Comment. One commenter recommended that the definition of consumers' education in § 161e.4(a)(1) be made more explicit as to types of social and civic services which might be purchased by consumers.

Response. No change is made in this section. However, § 161e.12 has been amended to include examples of types of services that may be purchased.

Comment. A commenter suggested that the definition of consumers' education include a reference to the legislative process as an area in which consumers need to participate effectively.

Response. No change is made in this section. However, § 161e.12 has been amended to include a reference to the legislative process as an appropriate subject for inclusion in a consumers' education project.

Section 161e.10 What are the purposes of the projects?

Comment. One commenter questioned whether the purposes listed in § 161e.10 represented special project emphasis that could be changed each year at the discretion of the Commissioner. Any such change in emphasis should be circulated for consideration and comment, the commenter stated.

Response. The Commissioner does not emphasize different purposes listed in § 161e.10 in any particular year. Each purpose remains equally valid. There is no change from year to year. However, under § 161e.13, the Commissioner may, in any given year, emphasize projects in one or more of the subject matters listed in § 161e.12. This emphasis might reflect the emergence of unanticipated but critical consumer issues of national import. The Commissioner publishes a notice in the **Federal Register** if a particular subject matter listed in § 161e.12 is to be emphasized. Only those subject matters listed in § 161e.12 may be emphasized without further public rulemaking (including public comment).

Comment. One commenter recommended changing the word "impact" to "benefit" in § 161e.10(d).

Response. The Commissioner agrees that "benefit" is a more inclusive term and the regulation has been amended accordingly.

Section 161e.11 What categories of activities are supported?

Comment. One commenter stated that this section could be misconstrued to mean that organizations and groups named in § 161e.11(a)(2) of the NPRM were ineligible for grants.

Response. The Commissioner agrees that the wording is unclear. This section has been changed and the groups listed in this section of the NPRM are now included in § 161e.2 as examples of parties eligible for grants.

Comment. One commenter suggested the addition of "rural people" to the list of target groups having special needs.

Response. The term "low-income" is broadly interpreted to cover people wherever they might live. Both rural and urban areas are covered. The regulations have been changed to reflect this.

Comment. The addition of mentally retarded adults to the list of groups with special needs in § 161e.11(a)(3) was suggested by one commenter.

Response. No change is made. The term "handicapped" includes mentally retarded adults.

Comment. One commenter urged that the list of groups with special needs in § 161e.11(4) (now (3)) be identified as being examples rather than all inclusive.

Response. This section has been changed to indicate that the list is not all inclusive.

Comment. One commenter expressed concern that paragraph (3) of § 161e.11(b) (Procurement contracts) might be interpreted to mean that mass media is the only accepted means of distributing consumers' education materials.

Response. The Commissioner agrees that the meaning of this section is unclear. Changes have been made to indicate that contracts may be awarded for the preparation and distribution of consumers' education material through use of mass media, as well as by other appropriate means.

Section 161e.12 What subject matter may be included?

Comment. One commenter suggested simplifying this section by combining related topics and reducing the number of subject matter examples from eleven to eight.

Response. No change is made. The examples provide ideas for relevant projects and introduce applicants to the many aspects of consumers' education. Though several topics are related, applicants should be aware that there can be several approaches to similar areas of concern.

Comment. A commenter suggested that educating consumers in the use of alternatives for scarce and costly goods, services, or resources should be included.

Response. A change has been made to include this subject in § 161e.12(d). The Commissioner considers this to be a significant component of consumers' education.

Comment. The logic of the sequential listing in § 161e.12(d) (now § 161e.12(e)) was questioned by one person.

Response. The list is reordered in more appropriate sequence. The revision appears as § 161e.12(e).

Comment. Two commenters recommended that in § 161e.12(g) the legislative process be added to those processes in which consumer-citizens may be educated to participate.

Response. Omission of the legislative process was an oversight. The addition is made and appears in § 161e.12(h).

Comment. A commenter stated that medical services, medical insurance, etc., are subjects about which modern consumers require knowledge.

Response. The Commissioner concurs that this is a subject matter area of significance to consumers. Section 161e.12(j) is revised to reflect this.

Comment. Two commenters suggested that § 161e.12 (i) and (j) in the NPRM be combined.

Response. The change is made. These two paragraphs include subjects of critical and timely importance and are therefore combined. The revision appears in § 161e.12(j).

Comment. More emphasis on subject matter related to the purchase of services was suggested by one commenter.

Response. Section 161e.12(c) has been changed to include both the purchase of goods and services.

Comment. One commenter expressed concern that no attention had been paid to behavioral components such as assertiveness or consumer self-confidence, collective action, or organizing techniques.

Response. A new § 161e.12(d) has been added to incorporate instruction in consumer self-reliance as a subject appropriate for grant projects. A change has also been made in § 161e.12(h) to include individual or collective participation in economic and government systems as another appropriate subject.

Section 161e.13 Will particular program subject matter be emphasized?

Comment. One person recommended that energy, energy conservation, and the role of the consumer in determining energy policies be emphasized.

Response. No change is made. The Commissioner has provided opportunities for applicants to emphasize these subjects in § 161e.12(g). In addition, § 161e.12(j) specifically mentions energy as an area of critical importance.

§ 161e.30 What selection criteria does the Commissioner use?

Comment. Two commenters stated that the criteria and points assigned to them were slanted in favor of educational institutions experienced in educational grantsmanship.

Response. The criteria are revised to provide for more equitable and judicious distribution of weights. Other revisions in the criteria are discussed at the beginning of this preamble.

Comment. One commenter said that the allocation of 10 points for increasing the capacity of the applicant to continue the benefits of the project after the grant period (§ 161e.30(5)(ii)) was too high.

Response. Weights allocated to certain criteria have been reassigned and this section is given 7 points. With limited funds available for the program, the Commissioner considers the potential for continuing benefits of the project a significant criterion.

Comment. A commenter noted that the program selection criteria failed to incorporate a significant criterion from EDGAR. That criterion has to do with providing access to project activities and employment to traditionally underrepresented groups.

Response. The language in § 161e.30(b)(1) (i) and (2) (ii) has been changed to conform to the requirements of the EDGAR criteria.

Section 161e.31 What is the duration of a project?

Comment. A person indicated that it would be advantageous to permit some projects to be renewed for two years beyond the initial 12-month period.

Response. No change is made in the regulation. The Commissioner agrees in principle that a 12-month grant limit precludes the development of some types of projects. However, approximately 90 percent of the applicants each year are denied the opportunity to participate in the program because of limited funds. If monies were set aside for continuations or renewals, the number of organizations or groups participating in the program would be further limited. It is the Commissioner's judgement that a 12-month grant duration allows for maximum participation and results in greater innovation.

General

Comment. Three commenters expressed either confusion over or disapproval of the eligibility of profit-making organizations to receive funds under the Consumers' Education Program. One stated that there should be no provision allowing profit-making organizations access to funds from this program. A second commenter recommended that regulations specify non-profit groups as "preferred" recipients of awards. A third commenter suggested that profit-making organizations be awarded procurement contracts only after it is determined that non-profit groups listed in § 161e.2(a) are unable to carry out contract goals.

Response. No change is made in the regulation. Profit-making organizations are eligible for contracts under Section 333 of the Elementary and Secondary Education Act. They are not eligible for grants. Laws governing procurement contracts do not permit the prohibition of profitmaking organizations as bidders on contracts. The statute does not set priorities among types of applicants. Therefore, these regulations cannot exclude or give preference to a particular applicant.

Comment. Two commenters suggested that the distinction between grants and procurement contracts be clarified. One also suggested that the distinction be made under § 161e.1 (What is the Consumers' Education Program?) and the other suggested it appear under § 161e.2 (What types of agencies are eligible to receive awards?)

Response. The distinction between grants and contracts is made in § 161e.11 based on the initiating agency and type of activities to be carried out.

Comment. A commenter urged that requests for proposals (RFPs) for procurement contracts appear in the **Federal Register** and other appropriate journals as well as Commerce Business Daily.

Response. COMMERCE BUSINESS DAILY is designated as the official publication which carries these requests. Every effort is made to circulate information about the RFPs in consumer and other appropriate newsletters and publications. The **Federal Register** does not publish RFPs.

Comment. Three commenters suggested that applicants be required to coordinate with other agencies, organizations, or groups to strengthen and broaden the impact of a project.

Response. No change is made. Not all projects lend themselves to this coordination. The Commissioner feels there is ample opportunity within the regulations for groups to work in consortia or in cooperation with other groups if it appears advantageous or appropriate to do so.

Comment. One person submitted a rewritten version of the regulations and criteria suggesting revisions in all sections except §§ 161e.13, 161e.20, and 161e.40.

Response. Several changes have been made for greater clarity and specificity. Among these changes are the addition of examples of the types of public agencies and non-profit private organizations in § 161e.2 that are eligible for grants; revisions in the definition of consumers' education in § 161e.4; clarifying revisions and additions in the categories of supported activities in § 161e.11 and in the subject matter list of § 161e.12. Revisions in the selection criteria are discussed at the beginning of this preamble.

Comment. One commenter suggested that the regulations include a provision which ensures that grantees will consult with publishers as they proceed to develop curricula or instructional materials.

Response. No change is made. Since this requirement is contained in Section 426 of the General Education Provisions Act and applies to all Office of Education Programs, it will be included in EDGAR, when EDGAR is published in final form in the **Federal Register**. The Consumers' Education Program is subject to EDGAR requirements.

These final regulations contain minor editorial and organizational changes.

In response to suggestions by the public and other interested parties, these final regulations contain provisions that were not in the Notice of Proposed Rule Making. These include (1) additions in the categories of supported activities and subject matter which may be included and (2) the incorporation into Consumers' Education Division General Administrative Regulations (EDGAR §§ 100a.202 through 100a.206). The purpose of incorporating these provisions into the final regulations is to enable applicants and grantees to understand better the requirements of this program without having to refer to additional documents.

Authority: These final regulations are issued under the authority of Part B of Title III of the Elementary and Secondary Education Act of 1965 as amended by Pub. L. 95–561.

(Catalog of Federal Domestic Assistance Number 13.564 Consumers' Education Program)

Dated: February 12, 1980.

William L. Smith,

Commissioner of Education.

The Commissioner redesignates Part 160e of the Code of Federal Regulations (CFR) as Part 161e and revises the regulations to read as follows:

PART 161e—FINANCIAL ASSISTANCE FOR CONSUMERS' EDUCATION PROJECTS

Subpart A—General

Sec.

161e.1 What is the Consumers' Education Program?
161e.2 Who is eligible to receive an award?
161e.3 What regulations apply to the Consumers' Education Program?
161e.4 What definitions apply specifically to this program?
161e.5–9 [Reserved]

Subpart B—What Kinds of Projects Does the Office of Education Assist Under this Program?

161e.10 What are the purposes of the projects?
161e.11 What categories of activities are supported?
161e.12 What subject matter may be included?
161e.13 Will particular program subject matter be emphasized?
161e.14–19 [Reserved]

Subpart C—How Does One Apply for a Grant?

161e.20 How does an applicant apply for funds?
161e.21–29 [Reserved]

Subpart D—How Is a Grant Made?

161e.30 What selection criteria does the Commissioner use?
161e.31 What is the duration of a project?
161e.32–39 [Reserved]

Subpart E—What Conditions Must a Grantee Meet?

161e.40 Are there restrictions on the kind of items a grant may support?
161e.41 What other restrictions apply?
161e.42 What provisions are made for participation of private school students?
161e.43–49 [Reserved]

Authority: Part E of Title III of the Elementary and Secondary Education Act as amended by Pub. L. 95–561, 92 Stat. 2214 (20 U.S.C. 2981–2986).

Subpart A—General

§ 161e.1 What is the Consumers' Education Program?

The Consumers' Education Program supports educational projects designed to assist consumers in developing the skills, knowledge, and understanding which will allow them to function effectively in the marketplace and in their roles as consumer-citizens. Support is through grants and procurement contracts.

(20 U.S.C. 2983)

§ 161e.2 Who is eligible to receive an award?

(a) *Grants.* The following are eligible to receive grants:

(1) Local educational agencies (LEAs);

(2) State educational agencies (SEAs);

(3) Institutions of higher education;

(4) Public agencies and non-profit private organizations, including, for example, State, county, or city government agencies, libraries, educational service agencies, labor unions, and

(5) Other non-profit private organizations including local, regional, and national consumer and community organizations or groups.

(b) *Procurement contracts.* The parties in paragraph (a) of this section and private profit-making organizations are eligible to receive procurement contracts.

(20 U.S.C. 2983)

§ 161e.3 What regulations apply to the Consumers' Education Program?

(a) *Regulations.* The following regulations apply to the Consumers' Education Program:

(1) the Education Division General Administrative Regulations (EDGAR) in Part 100a (Direct Grant Programs) and Part 100c (Definitions);

(2) The regulations in this Part 161e; and

(3) For procurement contracts, the applicable provisions of the Federal Procurement Regulations, 41 CFR, Chapters 1 and 3.

(b) *Definitions in EDGAR.* The following terms used in the part are defined in Part 100c:

"Applicant"
"Application"
"Budget"
"Commissioner"
"Contract"
"EDGAR"
"Elementary school"
"Facilities"
"Grant"
"Institution of higher education"
"Local educational agency"
"Non-profit"
"Private"
"Program"
"Project"
"Public agency"
"Secondary school"
"State educational agency"

(20 U.S.C. 2981)

§ 161e.4 What definitions apply specifically to this program?

(a) As used in these regulations—

"Act" means the Consumer Education Act of 1978, Part E of Title III of the Elementary and Secondary Education Act, as amended by Pub. L. 95–561.

"Consumers' education" means the process by which consumers:

(1) Devleop skills to make informed decisions in the purchase of goods and services in light of personal values, maximum utilization of resources, available alternatives, ecological considerations, and changing economic conditions;

(2) Become knowledgeable about the laws, rights, and methods of recourse in order to participate effectively and self-confidently in the marketplace and take appropriate action to seek consumer redress; and

(3) Develop and understanding of the consumer-citizen role in the economic, social, and government systems and how to influence those systems to make them responsive to consumers' needs.

"Curriculum" means an organized course of study. This includes print and non-print learning materials.

"Educational service agency" means an agency, formed jointly by several LEAs or by State law, to provide to those LEAs special services including, but not limited to, audio-visual aids, vocational training, data processing, and classes for the handicapped.

"Resources" means materials, personnel, methods, or information.

"Short-term training" means training for individual project participants that lasts less than an academic year. This training is usually in the form of workshops, seminars, or similar activities.

"Target group" means the specific group to benefit from or participate in a project.

"Technical assistance" means expert help provided to another agency, organization, or group, in the form of training, planning, consulting, or other specialized services.

(20 U.S.C. 2983)

Subpart B—What Kinds of Projects Does the Office of Education Assist Under this Program?

§ 161e.10 What are the purposes of the projects?

The purposes of the projects are to—

(a) Provide one or more elements of consumers' education as defined in § 161e.4;

(b) Increase the capacity of the applicant to continue the benefits of its consumers' education services on a long-term basis;

(c) Develop new methods, materials, or activities that may be duplicated or adapted by other groups; or

(d) Develop models or new activities with the potential for long-term local, State, regional, or national benefits.

(20 U.S.C. 2983)

§ 161e.11 What categories of activities are supported?

(a) *Grants.* Grants are awarded through a yearly competition to eligible parties in § 161e.2(a). These grants are for projects *initiated by the applicants,* which support activities designed to:

(1) Establish pilot or demonstration projects, or augment existing projects conducted by the parties listed in § 161e.2(a);

(2) Provide short-term training to prepare employees of these parties to plan, organize, and conduct consumers' education projects or teach consumer-related subject matter. Long-term training is not supported;

(3) Establish or expand pilot or demonstration projects to serve the needs of special groups including the elderly, Native Americans, persons with limited English-speaking ability, the handicapped, and urban and rural low-income groups;

(4) Research, develop, pilot test, evaluate, and disseminate curricula and other activities and materials in consumers' education; and

(5) Provide consumers' education at the elementary, secondary and higher education levels by State and local educational agencies and institutions of higher education.

(b) *Procurement contracts.* Procurement contracts are awarded to eligible parties in § 161e.2(b) to support activities, usually national in scope, which are *initiated by the Commissioner* to meet the needs of the Consumers' Education Program. Requests for Proposals (RFPs) are solicited through Commerce Business Daily, published by the Department of Commerce. Projects are designed to:

(1) Research, test, assess, evaluate, and disseminate existing consumers' education activities and materials, including those not otherwise assisted under this program;

(2) Disseminate information and provide developmental and technical assistance to agencies and organizations that are planning, developing, or carrying out consumers' education projects;

(3) Prepare and distribute consumers' education materials by the use of mass media or other appropriate means; and

(4) Support research and other activities the Commissioner determines are necessary for the development of the Consumers' Education Program.

(20 U.S.C. 2981–2983)

§ 161e.12 What subject matter may be included?

Consumers' education projects may include, but need not be limited to, the following—

(a) Basic economics of the marketplace.

(b) Management of personal and financial resources.

(c) Purchase of goods and services such as food, transportation, credit, insurance, housing, repairs, health care, and legal assistance.

(d) Methods of consumer self-reliance and alternatives to the use of scarce or costly goods, services, or resources.

(e) Consumer laws, rights, responsibilities, and redress.

(f) Government assistance and services such as social security and education.

(g) The role of the consumer in determining energy, conservation, and ecological policies.

(h) Individual or collective consumer participation in the economic and governmental systems, including the regulatory and legislative processes.

(i) Special issues and problems, such as advertising or product safety.

(j) Areas of critical, timely importance in which consumer action can limit costs, such as energy, housing, food, and health care (including medical services and insurance).

(k) Emerging issues for consumers.

(20 U.S.C. 2983)

§ 161e.13 Will particular program subject matter be emphasized?

The Commissioner may, in any given year, emphasize projects in one or more of the subject matters in § 161e.12. This emphasis of subject matter would be published as a notice in the **Federal Register.**

(20 U.S.C. 2983)

Subpart C—How Does One Apply for a Grant?

§ 161e.20 How does an applicant apply for funds?

The "Introduction to Education Division Grant Programs" at the beginning of the Educational Division General Administration Regulations (EDGAR) includes general information on—

(a) How to use regulations that apply to Education Division programs; and

(b) How to apply for a grant under an Education Division Program.

(20 U.S.C. 2984)

Subpart D—How is a Grant Made?

§ 161e.30 What selection criteria does the Commissioner use?

(a) The Commissioner evaluates an application for a grant on the basis of the selection criteria contained in these regulations which are specific to the Consumers' Education Program. Applicants are advised to read these criteria carefully.

(b) The following selection criteria total 100 points. The maximum number of points for each criterion indicates the relative importance assigned to the criterion. In evaluating the applications, the Commissioner looks for:

(1) *Project Design.* A project design which:

(i) Describes the consumer education needs of the target group; offers evidence that the target group supports the project; provides access to project activities to traditionally underrepresented groups; and, for grants made after October 1, 1980, if the applicant is a local educational agency or a State educational agency, contains a clear description of how the applicant will provide an opportunity for participation of students enrolled in private, non-profit schools; (10 points)

(ii) States specific goals which relate to the Consumers' Education Program, are relevant to stated needs, and are attainable within the time period of the grant; (5 points)

(iii) Identifies project activities related to the goals and describes how these activities will produce practical and significant results for the target group; (15 points) and

(iv) Reflects knowledge of present consumer education practices and resources, coordinates with other organizations where appropriate, and is innovative in concept. (10 points)

(2) *Management Plan.* A plan to ensure proper and efficient project administration which;

(i) Presents a time and work schedule that includes the use of resources and staff and the sequence of activities; (10 points) and

(ii) Clearly spells out the duties of key personnel, provides access to employment to traditionally underrepresented groups, and indicates the amount of time each person will commit to the project. (5 points)

(3) *Applicant qualifications.* Information on:

(i) Qualifications of the director and other key personnel, including consumer education experience or experience in the types of activities to be carried out in the project; (10 points) and

(ii) The extent and quality of agency or organization experience in consumer education or related activities. (5 points)

(4) *Evaluation.* A plan for:

(i) Evaluation of activities as they take place; (4 points) and

(ii) Evaluation of final outcomes of the project. (4 points)

(5) *Impact of the Project.* An impact which:

(i) Results in models that can be duplicated or adapted by others; (8 points) and

(ii) Increases the capacity of the applicant to continue the benefits of the project after the grant period. (7 points)

(6) *Budget.* A project budget which shows:

(i) Adequate funds to support the project activities and reasonable cost in relation to the Consumers' Education Program activities. (7 points)

§ 161e.31 What is the duration of a project?

Consumers' education grants under this part are for a period of 12 consecutive months.

(20 U.S.C. 2984)

Subpart E—What Conditions Must A Grantee Meet?

§ 161e.40 Are there restrictions on the kind of items a grant may support?

(a) Funds may not be used for construction, repair, remodeling, or alteration of facilities or sites.

(b) Allowable costs are subject to the applicable cost principles provided or referenced in §§ 100a.530 through 100a.535 of EDGAR.

(20 U.S.C. 2984)

§ 161e.41 What other restrictions apply?

Grants may be used to supplement or increase funds made available by the applicant for the project. Grants may not be used to supplant these funds.

(20 U.S.C. 2984)

§ 161e.42 What provisions are made for participation of private school students?

If an SEA or LEA receives a grant under this program, Sec. 302 of the Elementary and Secondary Education Act requires that agency to provide for participation by students enrolled in private elementary and secondary schools. EDGAR establishes the rules for this participation (See EDGAR, § 100a.680).

(20 U.S.C. 2942)

[FR Doc. 80-9532 Filed 4-2-80; 8:45 am]

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federal register

Thursday
April 3, 1980

Part XIV

Department of Health, Education, and Welfare

Office of Education

Youth Employment Program

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

45 CFR Part 161f

Youth Employment Program

AGENCY: Office of Education, HEW.

ACTION: Final Regulations.

SUMMARY: The Commissioner of Education issues final regulations governing grants under the Youth Employment Program authorized by Part F of Title III of Elementary and Secondary Education Act, as amended. The grants to State and local educational agencies and other public and non-profit private agencies, organizations and institutions provide assistance to improve youth employment by relating education and work and by improving and coordinating educational and employment services.

EFFECTIVE DATE: These regulations are expected to take effect 45 days after they are transmitted to Congress. Regulations are transmitted to Congress several days before they are published in the **Federal Register**. The effective date is changed by statute if Congress disapproves the provsions of these regulations or takes certain adjournments. If you want to know the effective date of these regulations, call or write the Office of Education contact person.

FOR FURTHER INFORMATION CONTACT: Ronald C. Tarlaian, U.S. Office of Education, 7th and D Streets, SW., Room 5008, ROB#3, Washington, D.C. 20202. Telephone: (202) 245–9730.

SUPPLEMENTARY INFORMATION: The Commissioner of Education published in the **Federal Register** on June 25, 1979 (44 CFR 37184) a notice of proposed rulemaking for this program. On August 3, 1979 public meetings were held on the proposed regulations in each of the HEW regional office cities. Interested persons were afforded 60 days to comment on the proposed regulations. During the comment period 20 persons submitted written comments and 10 person made statements or posed questions at 10 public meetings. The paragraphs that follow summarize those comments and suggestions and the Commissioner's responses to them.

Section 161f.4 Definitions.

Comment. Several commenters suggested that a definition of "youth" be included.

Response. A change has been made. Section 161f.4 has been changed to include a definition of "youth".

Section161f.1 Youth employment program and

Section161f.10 Purpose of the youth employment program.

Comment. A commenter said that neither of these sections make any reference to the research component of the program which is suggested by the language in section 341(b)(1) of the Act.

Response. A change has been made. Section 161f.10 has been changed to include conducting studies on youth employment problems as one of the ways to help prepare youth to take their places as working members of society.

Section 161f.11 What categories of activities are supported?

(1) *Comment.* Two commenters suggested that § 161f.11 be changed to emphasize the coordination of activities under the Youth Employment Program with activities under the Comprehensive Employment and Training Act (CETA) because the Act places particular emphasis on this coordination.

Response. Section 161f.11(b) has been changed to place greater emphasis on coordinating Youth Employment activities with CETA activities.

(2) *Comment.* A commenter suggested that § 161f.11(c) be changed by deleting the word "educational" and inserting the word "academic" before the terms agencies and institutions. Section 161f.11(c) provides assistance for encouraging educational agencies and institutions to develop means to award academic credit for competencies derived from work experience.

Response. No change has been made. The phrase "educational agencies and institutions" is taken from the Act. The use of the term "educational" instead of "academic" provides flexibility to include a broader range of institutions beyond the strictly academic school and, perhaps, better meet the needs of the youth population.

(3) *Comment.* Several commenters suggested the inclusion of a provision in the regulations for handicapped individuals.

Response. No change has been made. The Act authorizes the youth employment program to prepare children to become working members of society. It does not specify any particular group of children. Instead, the program is open to all children. The Youth Employment Program, like other Federal education programs, is subject to Section 504 of the Rehabilitation Act of 1973 and its implementing regulations in 45 CFR Part 84, which prohibit any discrimination on the basis of handicap. Handicapped youth may participate in youth employment activities along with other youth.

(4) *Comment.* A commenter questioned the restriction of technical and other assistance to State educational agencies (SEAs) and local educational agencies (LEAs) because the Act provides for this assistance to "eligible entities".

Response. A change has been made. It was not the intent to exclude public and non-profit private groups from receiving technical assistance. A clarifying change has been made in § 161f.11(h) to include public and non-profit private groups.

Section 161f.12 Emphasis among categories of activities.

Comment. A commenter questioned the rationale in § 161f.12 for the Commissioner to emphasize different categories of activities in a particular year.

Response. No change has been made. The provision for emphasizing one or more of the categories of activities listed in § 161f.11 allows flexibility to meet unanticipated but critical issues that might arise in a given year; give greater support to needs revealed through experience with the program; or fund, in fewer areas but in greater depth, categories of activities that may yield greater benefits to youth.

Section 161f.30 Selection criteria the Commissioner uses.

(1) *Comment.* One commenter stated that the criteria in § 161f.30(c)(1) was confusing because it was unclear whether more points would be awarded on the basis of the percentage of unemployed youth, the number of unemployed youth, or the lack of other resources to address this unemployment problem.

Response. A change has been made. Section 161f.30 has been rewritten to give separate points for (a) the percentage of unemployed youth (§ 161f.30(d)(1)) and (b) resources to address this problem (§ 161f.30(d)(2)).

(2) *Comment.* A commenter stated that the 5 points for the evaluation plan in § 161f.30(c)(4) were insufficient.

Response. No change has been made. The Commissioner believes that the 5 points maximum score given for an evaluation plan is sufficient in relation to the other program specific criteria in § 161f.31(f)(1)–(6).

(3) *Comment.* One commenter felt that language should be included in § 161f.30 to insure that activities under the Youth Employment Act complement activities funded under the Career Education Incentive Act.

Response. A change has been made. The legislative history of the new Title

III of the Elementary and Secondary Education Act of 1965 (ESEA) suggests that where feasible and appropriate, activities funded under the Youth Employment Section should complement activities under the Career Education Incentive Act. Section 161f.31(f)(5) has been revised to reflect this.

(4) *Comment.* Two commenters felt that language should be included in the regulations to assure that any coordination of projects under this Act with projects under the Vocational Education Act and CETA does not result in duplication of activities.

Response. A change has been made. Section 161f.31(d)(5) has been revised to ensure that there is no duplication of activities.

(5) *Comment.* A commenter suggested that the selection criteria in § 161b.30 be changed to give an applicant points for providing for participation of children in nonprofit private schools in a youth employment project.

Response. No change is made. Under Section 302 of the Elementary and Secondary Act, an award cannot be made to an SEA or an LEA for a youth employment project unless the Commissioner determines that the SEA or LEA: (a) Has consulted with non-profit private school officials in developing the application and (b) will provide an opportunity for private school children to participate in the project on a comparable basis with public school children. It is not a matter of giving a certain number of points to an application that provides for this participation; rather, it is a basic requirement that an applicant must meet in order to be considered for an award.

Section 161f.40 State and local educational agencies must provide an opportunity for private school students to participate.

Comment. A commenter expressed concern that the regulations did not adequately provide for equitable treatment of students in non-profit private elementary and secondary schools. In particular, the commenter suggested that a new section be added to clearly state the responsibilities of a grantee with respect to these students.

Response. A change has been made. A new § 161f.40 has been added to delineate the responsibilities of SEAs and LEAs to provide for participation by private elementary and secondary school children in youth employment activities under this program.

These provisions apply to SEAs and LEAs only. Under § 161f.2—Eligible applicants—a non-profit private agency (including an elementary or secondary school) is eligible to receive an award under this program in its own right.

General

Comment. A commenter suggested that greater emphasis be given to promoting sex equality and fairness in projects under the Youth Employment Program.

Response. No change has been made. The purpose of the Youth Employment Program as stated in title III of ESEA of 1965 as amended, is to prepare children to take their place as working members of society. There is no special emphasis on any particular group of children. The program is open to all children, regardless of their sex. However, a grantee under this program, must comply with title IX of the Education Amendments of 1972 and its implementing regulations in 45 CFR Part 86. Title IX prohibits discrimination on the basis of sex. The legislative history of the Youth Employment Program shows concern for coordinating activities under this program with activities under the Career Education Incentive Act, which emphasizes equal opportunities in making career choices without regard to sex. (H. Rep. No. 95–1137, 95th Cong., 2d Sess., 73 (1978)).

The Conference report (H. Rep. No. 95–1753, 95th Cong., 2d Sess., 269–270 (1978)) drops the House provision that would have conditioned the support of activities under the Youth Employment Act on those activities achieving the purposes of the Career Education Incentive Act. However, the Conference report does convey the intent that Youth Employment Act activities be carried out in a nondiscriminatory manner with due regard to sex equity.

In response to suggestions by the public and other interested parties, these final regulations contain provisions that were not in the notice of proposed rulemaking. These include (1) certain provisions of the statute governing this program and (2) the general selection criteria found in the Education Division General Administrative Regulations (EDGAR §§ 100a.202 through 100a.206). The purpose of incorporating these provisions into the final regulations is to enable applicants and grantees to understand better the requirements of this program without having to refer to these additional documents.

Dated: January 29, 1980.

(Catalog of Federal Domestic Assistance Program Number—not assigned)

William L. Smith,

Commissioner of Education.

The Commissioner amends Title 45 of the Code of Federal Regulations by adding a new part 161f to read as follows:

PART 161f—YOUTH EMPLOYMENT PROGRAM

Subpart A—General

Sec.
161f.1 Youth Employment Program.
161f.2 Eligible applicants.
161f.3 Regulations that apply to the Youth Employment Program.
161f.4 Definitions that apply to the program.
161f.5–9 [Reserved]

Subpart B—Kinds of Activities Assisted Under This Program

161f.10 Purpose of the Youth Employment Program.
161f.11 What categories of activities are supported?
161f.12 Emphasis among categories of activities.
161f.13–19 [Reserved]

Subpart C—How to Apply for a Grant

161f.20 How to apply for a grant.
161f.21–29 [Reserved]

Subpart D—How a Grant Is Made

161f.30 How the commissioner evaluates an application.
161f.31 Selection criteria the commissioner uses.
161f.32–39 [Reserved]

Subpart E—Conditions an Applicant Must Meet

161f.40 State and local educational agencies must provide an opportunity for private school students to participate.

Authority: Part f of Title III of the elementary and Secondary Education Act of 1965, as amended by Pub. L. 95–561, 92 Stat. 2215.

(20 U.S.C. 2991–2992)

Subpart A—General

§ 161f.1 Youth Employment Program.

The Youth Employment Program provides financial assistance for activities to improve youth employment by—

(a) Relating education and work; and

(b) Improving and coordinating educational and employment services.

(20 U.S.C. 2991)

§ 161f.2 Eligible applicants.

(a) The following are eligible to receive grants:

(1) State educational agencies (SEAs);

(2) Local educational agencies (LEAs);

(3) Other public and private non-profit agencies, institutions, and organizations.

(b) The following are eligible to receive procurement contracts:

(1) The agencies and organizations in paragraph (a); and

(2) Profit-making private organizations.

(20 U.S.C. 2942, 2991)

§ 161f.3 Regulations that apply to the Youth Employment Program.

(a) *Regulations for grants.* The following regulations apply to grants under the Youth Employment Program:

(1) The Education Division General Administrative Regulations (EDGAR) in part 100a (Direct Grant Programs) and part 100c (Definitions)

(2) Regulations in this part.

(b) *Regulations for procurement contracts.* The regulations in this part do not apply to procurement contracts under this program. Those contracts are subject to—

(1) Federal and HEW procurement regulations in 41 CFR chapters 1 and 3 and;

(2) Requirements and criteria in particular requests for proposal.

(20 U.S.C. 2991)

§ 161f.4 Definitions that apply to the program.

(a) *Definitions in EDGAR.* The following terms used in this part are defined in Part 100c of EDGAR.

Applicant
Applications
Commissioner
Grant
Local educational agency (LEA)
Nonprofit
Private
Program
Project
Public agency
State educational agency (SEA)

(b) *Specific program definitions.* As used in these regulations "Youth" means a person between the ages of 14 and 21.

(20 U.S.C. 1232(a))

Subpart B—Kinds of Projects Assisted Under This Program

§ 161f.10 Purpose of the Youth Employment Program.

The purpose of a Youth Employment Program is to prepare children to take their places as working members of society. This is done by developing ways to improve youth employment through—

(a) Relating education and work;

(b) Coordinating and improving educational and employment services; and

(c) Conducting studies on youth employment problems.

(20 U.S.C. 2991

§ 161f.11 What categories of activities are supported?

The Commissioner provides assistance for appropriate categories of activities such as the following:

(a) Developing ways to improve youth achievement in basic educational skills by involving youth in work experiences.

(b) Improving job opportunities for youth by coordinating educational activities with youth employment activities at the Federal, State, and local levels with particular emphasis on coordination with youth employment activities carried out by the Secretary of Labor, under the Comprehensive Employment and Training Act (CETA).

(c) Encouraging educational agencies and institutions to develop means to award academic credit for competencies derived from work experience.

(d) Studying the relationship of work to academic and intellectual achievement.

(e) Developing ways to improve career guidance and counseling services.

(f) Developing ways to improve placement and follow-up transition services from school to work, using school and community personnel.

(g) Developing ways to make the high school organization and operation more flexible as it relates to education and work. This includes, but is not limited to, flexibility of: course schedules, class locations, and school curricula;

(h) Providing technical assistance, information, training, and other assistance—to State Educational Agencies (SEAs), local educational agencies (LEAs) and other public and non-profit private agencies, organizations, and institutions—for the development of programs that enable students to make the transition from school to work more readily.

(20 U.S.C. 2991)

§ 161f.12 Emphasis among categories of activities.

The Commissioner may, in any given year, emphasize one or more of the categories of activities in § 161f.11 through a notice in the **Federal Register.**

(20 U.S.C. 2991)

Subpart C—How To Apply for a Grant

§ 161f.20 How to apply for a grant.

The "Introduction to Education Division Grant Programs" at the beginning of the EDGAR includes general information on—

(a) How to use regulations that apply to Education Division programs, and

(b) How to apply for a grant under an Education Division program.

(20 U.S.C. 2991)

Subpart D—How a Grant Is Made

§ 161f.30 How the Commissioner evaluates an application.

(a) The Commissioner evaluates an application on the basis of the criteria in § 161f.31.

(b) The Commissioner awards up to 100 possible points for these criteria.

(c) The maximum possible score for each complete criterion is indicated in parentheses at the end of that criterion.

(20 U.S.C. 22991)

§ 161f.31 Selection criteria the Commissioner uses.

(a) *Plan of operation.* (1) The Commissioner reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Commissioner looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(vi) For grants made after October 1, 1980, if the applicant is a local educational agency or State educational agency, a clear description of how the applicant will provide an opportunity for participation of students enrolled in private schools. (10 points)

(b) *Quality of key personnel.* (1) The Commissioner reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Commissioner looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory

employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(3) To determine the qualifications of a person, the Commissioner considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides. (7 points)

(c) *Budget and cost effectiveness.* (1) The Commissioner reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Commissioner looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project. (5 points)

(d) *Evaluation plan.* (1) The Commissioner reviews each application for information that shows the quality of the evaluation plan for the project. (See § 100a.590—Evaluation by the grantee.)

(2) The Commissioner looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable. (5 points)

(e) *Adequacy of resources.* (1) The Commissioner reviews each application for information that shows that the applicant plans to devote adequate resources to the project, including resources to meet the needs of persons to be served by the project.

(2) The Commissioner looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate. (3 points)

(f) The criteria contained in the following paragraphs supplement the EDGAR criteria and constitute 70 possible points. The Commissioner evaluates the extent to which an applicant—

(1) Documents the need for the proposed project in terms of the percentage of youth unemployment in the area to be served; (5 points)

(2) Establishes a need for additional resources to address this unemployment problem; (5 points)

(3) Establishes clearly that the stated objectives of the plan of operation meet the needs identified in paragraph (f)(1); (5 points)

(4) Demonstrates how the proposed project will produce new and innovative approaches to solving the youth employment problem including activities linking education and work; (15 points)

(5) Includes appropriate, feasible approaches to foster and sustain communication, coordination, and collaboration—without duplication of efforts—among activities and providers of services under this Act and activities and providers of services under—

(i) The Vocational Education Act;

(ii) The Career Education Incentive Act; and

(iii) In particular, the Comprehensive Employment and Training Act (CETA); (20 points) and

(6) Shows how the results of the proposed project are likely to improve youth employment. (20 points)

(20 U.S.C. 1221e-3(a)(i), 2991)

Subpart E—Conditions an Applicant Must Meet

§ 161f.40 State and local educational agencies must provide an opportunity for private school students to participate.

If an SEA or LEA receives a grant under this program, section 302(b) of the Elementary and Secondary Education Act requires that agency to provide for participation by students enrolled in private elementary and secondary schools. EDGAR established the rules for this participation (See EDGAR, § 100a.650).

(20 U.S.C. 2942(b))

[FR Doc. 80-9533 Filed 4-2-80; 8:45 am]

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Thursday
April 3, 1980

Part XV

Department of Health, Education, and Welfare

Office of Education

Financial Assistance for Environmental Education Projects

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

45 CFR Part 161h

Financial Assistance for Environmental Education Projects

AGENCY: Office of Education, HEW.

ACTION: Final rule.

SUMMARY: The Commissioner of Education revises regulations governing grants under the Environmental Education Act of 1978. Grants assist educational projects that improve public understanding of environmental issues as they relate to the quality of life. The revised regulations incorporate a statutory amendment which permits multi-year funding of projects. The revisions also simplify the regulations.

EFFECTIVE DATES: These regulations are expected to take effect 45 days after they are transmitted to Congress. Regulations are usually transmitted to Congress several days before they are published in the **Federal Register**. The effective date is changed by statute if Congress disapproves the regulations or takes certain adjournments. If you want to know the effective date of these regulations, call or write the Office of Education contact person.

FOR FURTHER INFORMATION CONTACT: Ms. Sylvia Wright, Program Officer, Office of Environmental Education, Room 2025, FOB–6, 400 Maryland Avenue, SW., Washington, D.C. 20202 (202–245–9231).

SUPPLEMENTARY INFORMATION: On March 9, 1979 the Office of Education published proposed regulations (44 FR 13048) for financial assistance for environmental education projects. The proposed regulations simplified the existing regulations governing grant support for developmental, demonstration, and mini-grant projects in environmental education. They also incorporated a new rule for the award of multi-year grants.

Because of the inclusion of the Environmental Education Act in Title III of the Elementary and Secondary Education Act, local educational agencies (LEAs) and State educational agencies (SEAs) must meet the requirements in Title III for involvement of private schools.

A number of comments were received on the proposed regulations, and virtually all of them were favorable. No substantive changes were made in the regulations.

Section 161h.14 What is a mini-grant project?

Comment. One commenter suggested that the mini-grant project category be redefined to include regional groups and the possibility of increased funding if the project is regional in scope.

Response. No change has been made. In keeping with the language of the authorizing legislation, the proposed regulations emphasized community groups and projects. However, regional entities or groups are not excluded from support under the mini-grant project category.

No applicant for a mini-grant project may receive more than $10,000 under the statute. Broader-scoped projects (e.g., regional) that require a higher level of funding than that permitted under the mini-grant project category are eligible for support under other funding categories.

General Comment

Comment. Another commenter suggested that the definition of environmental education be made broader and, specifically, that the following be eligible for funding consideration:

(1) Interdisciplinary outdoor experience that is not exclusively nature study or science oriented and that helps people understand their personal relationship to their whole environment, natural and cultural.

(2) Wilderness living programs that are based on ecological concepts and provide natural world experience through a "structured trip or in-the-wilderness stay."

Response. No change has been made. The proposed regulations do not define the term "environmental education" since it is defined in the statute. The statute defines environmental education as concerned with the relationship of various aspects of the natural and manmade environment and the total human environment. The proposed regulations clarify the concepts of manmade environment or surroundings and total human environment by stating that economic, policy, social, and cultural aspects would be included. This clarification will not result in the exclusion of any specific environmental area of study, issue, or educational approach such as interdisciplinary outdoor education or wilderness living programs, that meets the statutory definition of environmental education.

Other comments

In response to suggestions by the public and other interested parties, these final regulations contain provisions that were not in the notice of proposed rulemaking. These include (1) certain provisions of the statute governing this program and (2) the general selection criteria found in the Education Division General Administrative Regulations (EDGAR §§ 100a.202 through 100a.206). The purpose of incorporating these provisions into the final regulations is to enable applicants and grantees to understand better the requirements of this program without having to refer to these additional documents.

Section 161h.21 (To whom must an applicant submit its application for comment?) has been revised to indicate that (1) all applicants must meet the requirements for clearinghouse procedures; and (2) an applicant LEA Must meet the requirements for open meetings.

The requirements to be met by SEAs and LEAs for involvement of private schools are included in a new § 161h.43.

Finally, there were several editorial suggestions, most of which have been included in these regulations.

The reader will find a citation of statutory or other legal authority in parentheses on the line following each substantive provision.

Dated: January 31, 1980.

(Catalog of Federal Domestic Assistance Number 13.522, Environmental Education Act)

William L. Smith,

Commissioner of Education.

The Commissioner redesignates Part 183 of 45 CFR as Part 161h and revises the regulations to read as follows:

PART 161h—FINANCIAL ASSISTANCE FOR ENVIRONMENTAL EDUCATION PROJECTS

Subpart A—General

Sec.

161h.1 What is the environmental education program?
161h.2 Who is eligible to receive grants?
161h.3 What regulations apply to this program?
161h.4 What definitions apply to this program?

Subpart B—What Kinds of Projects Does the Office of Education Assist Under This Program?

161h.10 What are the Purposes of the projects?
161h.11 What types of projects are supported?
161h.12 What is a comprehensive multi-year project?
161h.13 What is a general project?
161h.14 What is a mini-grant project?
161h.15 Are priorities for funding established?

Subpart C—How Does One Apply for a Grant?

161h.20 What documents govern applications?
161h.21 To whom must an applicant submit its application for comment?

Subpart D—How Is a Grant Made?

161h.30 How does the Commissioner evaluate an application?
161h.31 What selection criteria does the Commissioner use?

Subpart E—What Conditions Must a Grantee Meet?

161h.40 Must a grantee help defray part of its project's costs?
161h.41 Are there restrictions on the types of costs a grant may support?
161h.42 What other restrictions apply to the use of grants?
161h.43 Must State and local educational agencies provide an opportunity for private school students to participate?

Authority: Part H of Title III of the Elementary and Secondary Education Act as amended by Pub. L. 95–561 (20 U.S.C. 3011–3018; 92 Stat. 2217–2221).

Subpart A—General

§ 161h.1 What is the Environmental Education Program?

The Environmental Education Program assists educational projects that improve public understanding of environmental issues as they relate to the quality of life. Under this program, the Commissioner may make direct grants to public or nonprofit private institutions, agencies, or organizations for developmental, demonstration, or mini-grant projects.

(20 U.S.C. 3011–3018)

§ 161h.2 Who is eligible to receive grants?

The following are eligible to receive grants:

(a) Public and private institutions of higher education and other nonprofit private organizations. Each of these applicants shall have been in existence for one year or more prior to submitting an application.

(b) State Educational Agencies (SEAs), local educational agencies (LEAs), and other public agencies and organizations.

(c) Consortia of eligible applicants as defined in paragraphs (a) (1) and (2) of this section.

(20 U.S.C. 3013(b)(1) and 3016)

§ 161h.3 What regulations apply to this program?

(a) *Regulations.* The following regulations apply to the Environmental Education Program:

(1) The Education Division General Administration regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and 45 CFR Part 100c (Definitions); and

(2) The regulations in this part.

(b) The "Introduction to Education Division Programs" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

§ 161h.4 What definitions apply to this program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in part 100c:

Applicant
Application
Commissioner
EDGAR
Grant
Grantee
Local educational agency (LEA)
Nonprofit
Private
Project
Project period
Public
State
State educational agency (SEA)

(20 U.S.C. 1232)

(b) *The following terms apply specifically to this program:* "Act" means the Environmental Education Act of 1978.

"Consortium" means a group consisting of representatives of various areas of expertise in environmental education, such as State and regional planning, economics, social policy, environmental protection, public interest, business, higher education, secondary education, and community education.

"Environmental area of study" means the study of the relationship between various aspects of the natural and manmade environment and the total human environment. These aspects include the relationship between energy, population, resource allocation and depletion, conservation, transportation, technology, economic impact, urban and rural planning and the total human environment. The term also encompasses specific environmental issues.

"Resources" means materials, personnel, methods, or information.

"Target group" means the group to benefit from or to participate in a project.

(c) The term "environmental education" is defined in the Act.

(20 U.S.C. 3011–3018)

Subpart B—What Kinds of Projects Does the Office of Education Assist under this Program?

§ 161h.10 What are the purposes of the projects?

In order to be considered for a grant, an applicant shall propose a project that—

(a) Includes the study of the policy, social, cultural, and economic aspects of the environmental area of study or issues to be addressed; and

(b) Provides an objective and balanced treatment of different views on environmental issues and resolutions of those issues.

(20 U.S.C. 3011)

§ 161h.11 What types of projects are supported?

The Commissioner may award funds for three types of projects:

(a) Comprehensive multi-year projects.

(b) General projects.

(c) Mini-grant projects.

(20 U.S.C. 3013, 3016)

§ 161h.12 What is a comprehensive multi-year project?

(a)(1) A comprehensive multi-year project is a developmental or demonstration project in environmental education that involves three or more activities and more than one target group.

(2) Specific target groups for a multi-year project may include educational administrators, teachers, students at the elementary, secondary, or post-secondary levels, community organizations, government employees, business and labor leaders, or the general public.

(b) A comprehensive multi-year project is intended to demonstrate effective methods for—

(1) Improving, over the long term, individual and institutional capabilities in environmental education;

(2) Adopting and adapting new knowledge as it becomes available;

(3) Identifying and using, in an appropriate and effective way, a broad range of local and regional resources;

(4) Achieving significant interaction between formal education and community education; and

(5) Facilitating local or regional adoption of the project's activities and the continuation of those activities after the project period ends.

(c) A comprehensive multi-year project requires more than 12 months to achieve its objective(s).

(20 U.S.C. 3013)

§ 161h.13 What is a general project?

(a) A general project is a developmental project in environmental education that focuses on a single activity, such as any one of the activities listed in section 353(b)(2) of the Act.

(b) A general project requires no more than 12 months to achieve its objective(s).

(20 U.S.C. 3013)

§ 161h.14 What is a mini-grant project?

(a) A mini-grant project is one or more community workshops, seminars, symposiums, or conferences on a community or local environmental issue.

(b) A mini-grant project is intended to assist the community—especially adults and members of community organizations other than the grantee organization—in understanding—

(1) The causes and effects of an environmental issue;

(2) Local policies and practices associated with the issue; and

(3) The options for resolving the issue.

(c) In addition to the primary activity, a mini-grant project may include a variety of preparatory and follow-up activities as needed to assure the project's success.

(d) A mini-grant project usually requires fewer than 12 months to achieve its objective(s).

(20 U.S.C. 3016)

§ 161h.15 Are priorities for funding established?

(a)(1) In any given year—through publication of a notice in the Federal Register—the Commissioner may give priority to one or more of the types of projects listed in § 161h.11 and further described in §§ 161h.12 through 161h.14.

(2) Within comprehensive multi-year projects, the Commissioner may in the notice give priority to projects that focus on one or more of the target groups specified in § 161h.12(a)(2).

(3) Within general projects, the Commissioner may in the notice give priority to one or more of the activities listed in section 353(b)(2) of the Act.

(b) In addition—

(1) In awarding grants for comprehensive multi-year projects, the Commissioner may give priority to consortia of eligible applicants; and

(2) In awarding grants for mini-grant projects, the Commissioner may give priority to nonprofit citizens' groups and volunteer organizations.

(20 U.S.C. 3013, 3016)

Subpart C—How Does One Apply for a Grant?

§ 161h.20 What documents govern applications?

The Commissioner considers making a grant to an eligible applicant only if the applicant prepares and submits an application according to—

(a) The regulations in this part;

(b) The applicable provisions in EDGAR;

(c) The procedures and priorities contained in the notices published in the Federal Register; and

(d) The instructions and forms included in the application package.

(20 U.S.C. 1232)

§ 161h.21 To whom must an applicant submit its application for comment?

(a) All applicants must meet the requirements described in EDGAR 45 CFR 100a.170 through 100a.173 (OMB Circular A-95 Clearinghouse Procedures).

(b) In addition, an applicant LEA must—

(1) Meet the requirements for open meetings described in EDGAR 45 CFR 100a.138 through 100a.141; and

(2) Submit a copy of its application to its SEA for review and comment. Procedures are described in EDGAR 45 CFR 100a.156 through 100a.158.

(20 U.S.C. 3014(b))

Subpart D—How is a Grant Made?

§ 161h.30 How does the Commissioner evaluate an application?

(a) The Commissioner evaluates an application on the basis of the criteria in § 161h.31 below.

(b) The Commissioner awards up to 100 possible points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses at the end of that criterion.

§ 161h.31 What selection criteria does the Commissioner use?

(a) *Plan of operation.* (1) The Commissioner reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Commissioner looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(vi) For grants to be made after October 1, 1980, if the applicant is a local educational agency or State educational agency, a clear description of how the applicant will provide an opportunity for participation of students enrolled in nonprofit private schools.

(b) *Quality of key personnel.* (1) The Commissioner reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Commissioner looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(3) To determine the qualifications of a person, the Commissioner considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides. (7 points)

(c) *Budget and cost effectiveness.* (1) The Commissioner reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Commissioner looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project. (5 points)

(d) *Evaluation plan.* (1) The Commissioner reviews each application for information that shows the quality of the evaluation plan for the project. (See § 100a.590—Evaluation by the grantee.)

(2) The Commissioner looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable. (5 points)

(e) *Adequacy of resources.* (1) The Commissioner reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Commissioner looks for information that shows—

(i) The facilities that the applicant plans to use are adequate, and

(ii) The equipment and supplies that the applicant plans to use are adequate. (3 points)

(20 U.S.C. 1221e(3)(a)(1))

(f) *Adequacy of content treatment.* The Commissioner reviews each application to determine the extent to which the proposed project—

(1) Identifies and organizes into a meaningful relationship to one another the policy, social, economic, cultural, technological, bio-physical, and human health aspects of the environmental area of study or issue(s) to be addressed; (25 points)

(2) Reflects current knowledge of the environmental area of study or issue(s) to be addressed; (10 points)

(3) Is likely to communicate that knowledge in a manner that is appropriate to the project's objective(s) and target group(s). (10 points)

(g) *Project effectiveness.* The Commissioner reviews each application to determine the extent to which the proposed project will enhance the ability of its target group(s) to participate in environmental decision-making by improving the ability of the group(s) to—

(1) Contribute to the identification of environmental issues and alternative resolutions of those issues;

(2) Assess short- and long-term risks, benefits, costs, and acceptability of alternative resolutions; and

(3) Understand the need for practicable resolutions embodying different points of view. (15 points)

(h) *Potential impact.* The Commissioner reviews each application to determine the extent to which the proposed project gives evidence of—under one of the following categories—potential for improving the quality of environmental education:

(1) If the proposed project is a comprehensive multi-year project, the extent to which it has the potential for being a national demonstration project; or

(2) If the proposed project is a general project, the extent to which its results can be adapted for environmental education in other areas of the country; or

(3) If the proposed project is a mini-grant project, the extent to which it is likely to improve the ability of its target group(s) to understand local environmental issues in a broader context. (10 points)

(20 U.S.C. 1221e-3(a)(1); 3013; 3016)

Subpart E—What Conditions Must a Grantee Meet?

§ 161h.40 Must a grantee help defray part of its project's cost?

(a) If the project is a national-level curriculum development, evaluation, dissemination, or demonstration project, the grant may cover 100 percent of the cost.

(b) If the project is a mini-grant project, the grant may cover 100 percent of the cost up to $10,000.

(c)(1) For other types of projects, Federal funding may not exceed 80 percent of the approved project cost for the first year.

(2) In the second and third years, Federal funding decreases to 60 percent and 40 percent respectively, of the approved project cost for the first year, regardless of the actual project cost in the second and third years.

(3) The non-federal contribution to the approved project cost may be in cash or in kind, including fairly evaluated plant, equipment, and services contributions.

(20 U.S.C. 3014(d) and 3016)

§ 161h.41 Are there restrictions on the types of costs a grant may support?

(a) Federal funds may not be used for improvement or alteration of sites.

(b) Funds may not be used for subgrants.

(20 U.S.C. 3013, 3016)

§ 161h.42 What other restrictions apply to the use of grants?

Grants may be used to supplement or increase funds made available by the applicant for these types of activities. Grants may not be used to supplant those funds.

(20 U.S.C. 3014(a)(4))

§ 161h.43 Must State and local educational agencies provide an opportunity for private school students to participate?

If an SEA or LEA receives a grant under this program, the Act requires that agency to provide for participation by students enrolled in nonprofit private elementary and secondary schools. EDGAR establishes the rules for this participation (See EDGAR, 45 CFR 100a.650).

(20 U.S.C. 2942(b))

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Part XVI

Department of Health, Education, and Welfare

Office of Education

Adult Education State-Administered Program and Commissioner's Discretionary Programs

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

45 CFR Parts 166, 166a, 166b, 166c

Adult Education State-Administered Program and Commissioner's Discretionary Programs

AGENCY: Office of Education, HEW.

ACTION: Final Regulations.

SUMMARY: The Commissioner of Education issues final regulations to implement the Adult Education Act, amended by the Education Amendments of 1978. These regulations govern the State-administered program of adult education and the Commissioner's four discretionary programs. The primary thrust of these regulations is to significantly expand the State delivery system of educational services to adults who are least educated and most in need of assistance. The regulations also address educational programs for adult immigrants and adult Indochina refugees, planning grants to States, and a national development and dissemination program.

EFFECTIVE DATE: These regulations are expected to take effect 45 days after they are transmitted to the Congress. Regulations are transmitted to the Congress several days before they are published in the **Federal Register.** If the Congress disapproves the regulations or takes certain adjournments, the effective date is changed by statute. To learn the effective date of these regulations, phone or write the contact person for the Division of Adult Education listed below.

FOR FURTHER INFORMATION CONTACT: Mr. Paul V. Delker, Director, Division of Adult Education, U.S. Office of Education, 400 Maryland Avenue SW., (ROB–3, Room 5056), Washington, D.C. 20202, (202) 245–2278.

SUPPLEMENTARY INFORMATION:

Background

Title XIII of the Education Amendments of 1978 (Pub. L. 95–561) contains the amendments to the Adult Education Act. The primary purpose of the Adult Education Act has been, and continues to be under the new amendments, to offer educationally disadvantaged persons 16 years of age and older the opportunity to acquire basic skills necessary to function in society and to become more employable, productive, and responsible citizens.

There are two major parts to the adult education program established under the Adult Education Act. One is the State-administered program and the other is comprised of four national discretionary programs.

The State-administered program establishes a cooperative effort between the Federal Government and the States. Funds are allocated to the States on a formula basis and the States, in turn, fund local programs based on need and resources available. Each State is required to match these Federal adult education funds at the rate of ten cents for every ninety cents of Federal money.

The Commissioner of Education considers the most important objective of this Act to be to provide adult basic education for those who are least educated and most in need of assistance. As the House Report on this subject stated, "The needs of those individuals have not been adequately met to date and now is not the time to loosen up the requirements of the Act to spend more funds on those who are better educated and closer to achieving high school equivalency. For this reason, the Committee [on Education and Labor] adopted amendments that specifically direct that the required State plans describe how the program in each State will reach some of the adult populations traditionally most in need of, and least likely to participate in, adult education." (H. Rept. No. 95–1137, p. 128)

Congress amended the Adult Education Act to stress a significant expansion of a State's delivery system and an increased emphasis on outreach activities. With respect to the expansion of its delivery system, a State may now award subgrants to public and private nonprofit agencies in addition to the traditional recipients (i.e., local educational agencies). A State is also required to seek the active participation of representatives of diverse interests in developing and carrying out its State plan.

The new amendments to the Act direct the States to increase their activities to inform the adult populations who are least educated and most in need of assistance of the availability and benefits of the adult education program. In order to ensure the participation of these adult populations, recipients of funds must provide reasonable and convenient access to the program. Programs must be more flexible in their course offerings, locations, and in terms of assuring the availability of additional services such as day care and transportation.

The Act now requires that a State include in its State plan the criteria it will use to assess the applications submitted by eligible applicants. This requirement constitutes a major departure from past practice and will lead to greater accountability for the expenditure of Federal funds.

In addition to the State-administered program, the Act authorizes—

1. A National Development and Dissemination Program;
2. Planning Grants;
3. An Emergency Adult Education Program for Indochina Refugees; and
4. An Adult Education Program for Adult Immigrants.

These regulations do not address contracts under the National Development and Dissemination Program and the Adult Education Program for Adult Immigrants. In the case of contracts, an offeror shall submit to the Commissioner a proposal that meets the requirements of a Request for Proposal (RFP) as announced by the Commissioner in the *Commerce Business Daily*. Selection criteria will be contained in the Request for Proposal. The proposal must meet the requirements of chapters 1 and 3 of Title 41 of the Code of Federal Regulations.

How To Use These Regulations

In response to suggestions by the public and other interested parties, these final regulations contain provisions that were not in the Notice of Proposed Rulemaking. These include (1) certain provisions of the statute governing this program and (2) the general selection criteria found in the Education Division General Administrative Regulations (EDGAR §§ 100a.202 through 100a.206). The purpose of incorporating these provisions into the final regulations is to enable applicants and grantees to understand better the requirements of this program without having to refer to these additional documents.

In addition, the numbering system of these final regulations has been changed to a new format that signifies regulations for multiple programs under one statute. Part 166, covering adult education programs, includes: A general section that applies to all programs under these regulations; Part 166a that pertains only to the State-administered Adult Education Program; Part 166b that pertains only to the National Adult Education Development and Dissemination Program and Planning Grants; and Part 166c that pertains only to the Adult Education Programs for Immigrants and Indochina Refugees.

These regulations do not contain certain types of administrative requirements formerly found in the adult education program regulations. Those requirements are covered in the Education Division's General Administrative Regulations (EDGAR), which replace the General Provisions for Office of Education Programs regulations.

The "Introduction to Education Division Programs" at the beginning of EDGAR includes general information to assist recipients in using regulations that apply to Education Division programs.

Certain other administrative requirements are contained in the Department of Health, Education, and Welfare General Administration regulations in 45 CFR Part 74 (Administration of Grants). These HEW grants administration regulations cover, for example, cost principles, reporting requirements, property requirements, and procurement standards.

The General Education Provisions Act and the various civil rights authorities also govern the operation of the adult education program. The regulations implementing the civil rights authorities and those relating to the protection of human subjects and day care services are referenced in these regulations.

Public Participation

In October and November of 1978, the Office of Education convened four area workshops with State Directors of Adult Education. The purpose of these workshops was to raise issues concerning the fulfillment of the legislative intent with suggested alternatives for resolving the issues. These workshops also provided an opportunity to share with State Directors suggested models and processes for planning and carrying out state adult education programs.

On November 29, 1978, the Commissioner announced in the **Federal Register** (43 FR 58801) a Notice of Intent to Develop Regulations for the Adult Education Program. Following this announcement, ten area meetings were held across the country to identify and resolve major issues raised by the amended legislation before final regulations were implemented.

Many comments and suggestions were submitted at the four workshops and ten area meetings. In addition, over 200 persons mailed comments directly to the Office of Education. These comments were analyzed and, in many instances, incorporated into the proposed regulations.

The Notice of Proposed Rulemaking (NPRM) was published in the **Federal Register** on June 28, 1979 (44 FR 37866). Interested persons were given 60 days to comment on these proposed regulations. On August 7, 1979, public meetings were held in ten cities in order to receive public comment regarding the proposed regulations.

Over 300 public comments were received. The commenters were generally very supportive of the proposed regulations. It was frequently pointed out that the proposed regulations were written in a form that was not overly prescriptive or lengthy; that they retained reliance on the integrity of the State educational agency to administer the State grant program using the broadest delivery mechanism possible; and that they reflect the priorities of the law for the inclusion of those adults who are least educated and most in need of educational assistance.

Appendix B of these regulations contains comments, suggestions, and recommendations that were submitted either in writing or at the public meetings. After each comment summary, a response is given stating the changes that have been made in the regulations or the reasons why no change was considered necessary or appropriate. The comments are arranged in numerical order according to the section of the regulations to which they refer. Comments which could not be classified according to section are included under a general heading at the end of Appendix B.

Citation to Legal Authority

As required by section 431(a) of the General Education Provisions Act, a citation to the statutory or other legal authority for each provision of the regulations has been placed in parentheses on the line immediately following the text of the regulation.

Unless otherwise noted, the statutory citation is to the Adult Education Act, Pub. L. 91–230, as amended. Citation to the United States Code (U.S.C.) generally follows a citation to a section of the Act.

(20 U.S.C. 1232(a))

Dated: March 10, 1980.

William L. Smith,

Commissioner of Education.

(Catalog of Federal Domestic Assistance (CFDA) No. 13.400, Adult Education State-administered Program; No. 13.579, Emergency Adult Education Program for Indochina Refugees; No. 13.692, Adult Education Program for Adult Immigrants. CFDA Nos. not assigned for National Adult Education Development and Dissemination Program and Planning Grants.)

45 CFR is amended as follows:

1. Part 166 is revised to read as follows:

PART 166—ADULT EDUCATION STATE-ADMINISTERED PROGRAM AND COMMISSIONER'S DISCRETIONARY PROGRAMS

Subpart A—General

Sec.

166.1 What are the adult education programs?
166.2 What is the purpose of the Act?
166.3 What other regulations are applicable to the adult education programs?
166.4 What definitions apply to the adult education programs?
166.5–166.9 [Reserved]

Authority: Secs. 301–318 of Pub. L. 91–230, as amended by Title XIII of Pub. L. 95–561, 92 Stat. 2356, 20 U.S.C. 1201–1211c, unless otherwise noted.

Subpart A—General

§ 166.1 What are the adult education programs?

Part 166 contains regulations interpreting or implementing the programs authorized under the Adult Education Act. The programs included in this part are—

(a) State-administered Adult Education Program;

(b) National Adult Education Development and Dissemination Program and Planning Grants; and

(c) Adult Education Programs for Immigrants and Indochina Refugees.

(20 U.S.C. 1201 *et seq.*)

§ 166.2 What is the purpose of the Act?

The purpose of the Act is to—

(a) Expand educational opportunities for adults; and

(b) Encourage the establishment of programs of adult education that will—

(1) Enable all adults to acquire basic skills necessary to function in society;

(2) Enable adults who so desire to continue their education to at least the level of completion of secondary school; and

(3) Make available to adults the means to secure training that will enable them to become more employable, productive, and responsible citizens.

(Sec. 302; 20 U.S.C. 1201)

§ 166.3 What other regulations are applicable to the adult education program?

(a) The following regulations also apply to the State-administered program and the Commissioner's discretionary programs under the Adult Education Act:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs), 45 CFR Part 100b (State-administered Programs), and 45 CFR Part 100c (Definitions).

(2) The Department of Health, Education, and Welfare General Administration Regulations in 45 CFR Part 74 (Administration of Grants).

(3) The Federal Interagency Day Care Regulations in 45 CFR Part 71.

(4) 45 CFR Parts 80 and 81 relating to nondiscrimination on the basis of race.

(5) 45 CFR Part 84 relating to nondiscrimination on the basis of handicap.

(6) 45 CFR Part 86 relating to nondiscrimination on the basis of sex.

(7) 45 CFR Part 46 relating to the protection of human subjects.

(8) 45 CFR Part 90 relating to nondiscrimination on the basis of age.

(b) The "Introduction to Education Division Programs" at the beginning of EDGAR includes general information to assist recipients in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(20 U.S.C. 1201, 1221)

§ 166.4 What definitions apply to the adult education programs?

(a) *Statutory definitions.* The following terms used in this part are defined in section 303 of the Act:

(1) The term "adult" means any individual who has attained the age of sixteen.

(2) The term "adult education" means services or instruction below the college level (as determined by the Commissioner), for adults who—

(i) Lack sufficient mastery of basic educational skills to enable them to function effectively in society or who do not have a certificate of graduation from a school providing secondary education and who have not achieved an equivalent level of education; and

(ii) Are not currently required to be enrolled in schools.

(3) The term "adult basic education" means adult education for adults whose inability to speak, read, or write the English language constitutes a substantial impairment of their ability to get or retain employment commensurate with their real ability, which is designed to help eliminate such inability and raise the level of education of such individuals with a view to making them less likely to become dependent on others, to improving their ability to benefit from occupational training and otherwise increasing their opportunities for more productive and profitable employment, and to making them better able to meet their adult responsibilities.

(4) The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico and (except for the purposes of section 305(a)) Guam, American Samoa, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, and the Virgin Islands.

(5) The term "institution of higher education" means any such institution as defined by section 801(e) of the Elementary and Secondary Education Act of 1965.

(Sec. 303; 20 U.S.C. 1202)

(b) *Definitions in EDGAR.* The following terms used in this part are defined in Part 100c:

(1) Applicant
(2) Application
(3) Award
(4) Budget period
(5) Commissioner
(6) Local educational agency
(7) Nonprofit
(8) Private
(9) Project
(10) Project period
(11) Public
(12) State educational agency

(c) *Definitions in Part 74.* The following terms used in this part are defined in 45 CFR Part 74:

(1) Budget
(2) Grant
(3) Grantee
(4) Subgrant
(5) Subgrantee

(d) *Program definitions.* The following definitions also apply to the adult education programs:

(1) "Act" means the Adult Education Act (20 U.S.C. 1201 *et seq.*).

(2) "Expansion" means that the State educational agency has increased during the period covered by the three-year plan—

(i) The number of agencies, institutions, and organizations—other than local educational agencies—used to provide adult education and support services; and

(ii) One or both of the following:

(A) The number of adults least educated and most in need of assistance participating in the adult education program.

(B) The percentage of adults least educated and most in need of assistance who met their educational objectives.

(3) "Immigrant," as used in this part, means any refugee admitted (paroled) into this country or any alien except one who is exempt under the provisions of the Immigration and Nationality Act, as amended.

(8 U.S.C. 1101(a)(15))

(4) "Indochina refugee," as defined in the Indochina Migration and Refugee Assistance Act of 1975, as amended by Pub. L. 94–313, and as used in this part, means an alien who because of persecution or fear of persecution on account of race, religion, or political opinion, fled from Cambodia, Vietnam, or Laos; cannot return there because of fear of persecution on account of race, religion, or political opinion; and is in urgent need of assistance for the essentials of life.

(22 U.S.C. 2601)

(5) "Institutionalized person" means an adult, as defined in the Act, who is an inmate, patient, or resident of a special institution.

(6) "Limited English proficiency" or "limited English language skills" refers to difficulty in speaking, reading, writing, or understanding the English language so that adults are denied the opportunity to learn successfully in a learning environment where the language of instruction is English.

(7) "Outreach" means activities designed to—

(i) Inform adult populations who are least educated and most in need of assistance of the availability and benefits of the adult education program; and

(ii) Assist these adult populations to participate in the program by providing reasonable and convenient access.

(20 U.S.C. 1202)

PART 166a—STATE-ADMINISTERED ADULT EDUCATION PROGRAM

2. A new Part 166a is added as follows:

Subpart A—General

Sec.
166a.10 How is the adult education State-administered program governed?

Subpart B—How a State Applies for a Grant

166a.11 Who is eligible?
166a.12 What documents must a State submit to receive its grant?
166a.13 What must the State plan contain?
166a.14 How is the State plan developed?
166a.15 What other requirements must a State educational agency meet?
166a.16–166a.20 [Reserved]

Subpart C—State Advisory Councils

166a.21 What are a State's responsibilities regarding State advisory councils?
166a.22 How is a State advisory council established?
166a.23 How is the membership of a State advisory council determined?
166a.24 How is the membership of a State advisory council certified?
166a.25 What are the functions and responsibilities of a State advisory council?
166a.26 What are the requirements for State advisory council meetings?
166a.27 What costs are allowable?
166a.28–166a.30 [Reserved]

Subpart D—How a Grant Is Made to a State

166a.31 How is the amount of each State's grant determined?
166a.32 What is each State's limitation on administrative costs?
166a.33–166a.40 [Reserved]

Subpart E—How To Apply to the State for a Subgrant

166a.41 Who is eligible for a subgrant?

166a.42–166a.50 [Reserved]

Subpart F—How a Subgrant Is Made to an Applicant

166a.51 How will a State review annual applications?
166a.52–166a.60 [Reserved]

Subpart G—Conditions That Must Be Met by a State

166a.61 What are the matching requirements of the program?
166a.62 What are the maintenance of effort requirements of the program?
166a.63 How is a maintenance of effort waiver granted?
166a.64 What are exceptional and unforeseen circumstances?
166a.65 How is maintenance of effort computed in the event of a waiver?
166a.66 What are the percentage requirements with respect to State distribution of Federal funds?
166a.67–166a.70 [Reserved]

Subpart H—State-administered Special Experimental Demonstration Projects and Teacher Training Projects

166a.71 Who are the eligible applicants for these projects?
166a.72 What are the criteria and priorities in administering these projects?
166a.73 How will a State administer these projects?
166a.74 How will the results be disseminated?
166a.75–166a.100 [Reserved]

Authority: Secs. 301–318 of Pub. L. 91–230, as amended by Title XIII of Pub. L. 95–561, 92 Stat. 2356, 20 U.S.C. 1201–1211c, unless otherwise noted.

PART 166a—STATE-ADMINISTERED ADULT EDUCATION PROGRAM

Subpart A—General

§ 166a.10 How is the adult education State-administered program governed?

(a) *Federal-State relationship.* The adult education State-administered program is a cooperative effort between the Federal Government and the States to provide adult education. Federal funds are granted to the States on a formula basis. The States fund local programs of adult education based on need and resources available.

(b) *Other applicable provisions.* The provisions of §§ 166.1 through 166.4 of 45 CFR Part 166 apply to the State-administered Adult Education Program under this part.

(20 U.S.C. 1201)

Subpart B—How a State Applies for a Grant

§ 166a.11 Who is eligible?

Any State may apply for a grant under this part.

(Sec. 304(a); 20 U.S.C. 1206)

§ 166a.12 What documents must a State submit to receive its grant?

A State educational agency shall submit to the Commissioner:

(a) A single State application as required by section 435 of the General Education Provisions Act. If a State educational agency has on file with the Commissioner a single State application for all education programs, this requirement is satisfied.

(b) A State plan, developed once every three years, that meets the requirements of these regulations and the Act.

(c) The certification required by 45 CFR § 100b.104 of EDGAR.

(d) Program assurances, signed by an authorized official of the State educational agency, to provide that—

(1) The State educational agency, in carrying out the adult education program, will provide for—

(i) Adequate consultation, cooperation, and coordination among the State educational agency, State manpower service councils, State occupational information systems, and other agencies, organizations, and institutions in the State that operate employment and training programs or other educational or training programs for adults; and

(ii) Coordination of programs carried on under this title with other programs, including reading improvement programs, which are designed to provide reading instruction for adults and are conducted by State and local agencies.

(2) The State educational agency will make available not to exceed 20 percent of the State's allotment for programs of equivalency for a certificate of graduation from a secondary school.

(3) The State educational agency will ensure that special emphasis will be given to adult basic education programs except where these needs have been met in the State.

(4) Adults enrolled in adult basic education programs will not be charged tuition, fees, or any other charges, or be required to purchase any books or any other materials that are needed for participation in the program.

(5) Not more than 20 percent of the funds granted to the State under the Act for any fiscal year shall be used for the education of institutionalized adults.

(6) The State educational agency will provide that special assistance be given to the needs of persons with limited English proficiency by providing bilingual adult education programs of instruction in English and, to the extent necessary to allow these persons to progress effectively through the adult education program, in the native language of these persons. These programs will be carried out in coordination with programs of bilingual education assisted under title VII of the Elementary and Secondary Education Act of 1965 and bilingual vocational education programs under the Vocational Education Act of 1963, as amended.

(7) For each fiscal year covered by this plan, the State will have available for expenditure for adult education from non-Federal sources an amount that is not less than the fiscal effort per student or the aggregate amount expended for adult education purposes from non-Federal sources during the preceding fiscal year.

Note.—In the event of exceptional and unforeseen circumstances, the State may, under § 166a.63, request a one-time waiver of this requirement.

(8) The State educational agency will monitor and report program performance in accordance with Subpart J of 45 CFR Part 74.

(Secs. 304(b), 306, 307(b); 20 U.S.C. 1203, 1205, and 1206)

§ 166a.13 What must the State plan contain?

(a) A State educational agency shall include in its State plan a description of the policies, procedures, and activities for carrying out the requirements—

(1) Listed in section 306(b) of the Act; and

(2) Included in these regulations.

(b) A State educational agency may meet the requirements of section 306(b)(2) and (6), covering administration, fiscal control, and fund accounting procedures, by submitting to the Commissioner a single State application under section 435 of the General Education Provisions Act.

(c) A State educational agency shall describe, for the three-year period covered by the plan, the adult education needs of all segments of the adult population in the State. A State educational agency shall specifically describe the needs of those adults who are least educated and most in need of assistance.

(d) A State educational agency shall identify the other Federal and non-Federal resources available to meet the needs described in paragraph (c) of this section.

(e)(1) A State educational agency shall identify the goals it intends to achieve in meeting the needs described in paragraph (c) of this section for the period covered by the plan.

(2) A State educational agency shall describe proposed activities and estimated expenditures of reaching each goal.

(f)(1) A State educational agency shall describe the outreach activities that the State intends to carry out during the period covered by the plan.

(2) In conjunction with these outreach activities, a State educational agency shall describe the efforts it will undertake to assure support services during the period covered by the plan. Support services include flexible schedules, transportation, and day care services. A State educational agency shall identify the resources to be used for these support services. A concerted effort shall be undertaken to provide these services through other programs, agencies, and organizations.

(g) A State educational agency shall describe its procedures for ensuring that cooperative arrangements will be entered into with other agencies for delivering adult education and support services.

(h) A State educational agency shall describe the criteria for evaluating project applications.

(i) In any plan submitted subsequent to the initial three-year plan under the Act, a State educational agency shall describe—

(1) Its accomplishments, in meeting the goals included in the previous three-year plan; and

(2) How the assessment of accomplishments and the evaluation required by paragraph (k) of this section were considered in establishing the State's goals for adult education in the plan being submitted.

(j) A State educational agency shall describe its policies, procedures, and activities for carrying out special experimental demonstration projects and teacher training projects that meet the requirements of §§ 166a.71 through 166a.74 of these regulations.

(k) A State educational agency shall provide for an evaluation of activities under sections 306 and 310 of the Act. The evaluation shall be performed at least once every three years. Evaluation procedures, schedule of evaluations, and specific criteria to be used in assessing the effectiveness of all activities shall be included in the State plan. A summary of the State's evaluation of activities shall be sent to the Commissioner within 90 days of the close of each program year.

(l) If applicable, a State educational agency shall include in the plan a notification of the establishment of and membership of a State advisory council that meets the rquirements of §§ 166a.21 through 166a.27 of these regulations. Because the Act does not require a State educational agency to establish a State advisory council, only States that fund councils out of the Federal allotment or non-Federal matching funds are subject to these requirements.

(Secs. 306, 312; 20 U.S.C. 1205, and 1211)

§ 166a.14 How is the State plan developed?

(a) A State educational agency shall involve in the development of the plan one or more representatives of each of the following agencies and groups:

(1) The business community
(2) Industry
(3) Labor unions
(4) Public educational agencies and institutions
(5) Private educational agencies and institutions
(6) Churches
(7) Fraternal/sororal organizations
(8) Voluntary organizations
(9) Community organizations
(10) State manpower and training agencies
(11) Local manpower and training agencies
(12) Adult residents of rural areas
(13) Adult residents of urban areas with high rates of unemployment
(14) Adults with limited English language skills
(15) Institutionalized adults

(16) Other entities concerned with adult education, such as the Right to Read and Basic Skills programs, volunteer literacy programs, libraries, and organizations offering education programs for older persons and military personnel and their adult dependents.

(b) A State educational agency shall describe in its plan—

(1) How the representatives in paragraph (a) of this section were selected; and

(2) The means by which these representatives were involved in the development of the plan.

(c) The Commissioner considers the term "involved in the development of the plan" to mean that the representatives in paragraph (a) of this section are given an opportunity to actively participate in all stages of formulating the plan.

(d) If the participating representatives are not able to agree upon the provisions of the final plan, the State educational agency shall make the final decision. A State educational agency shall included in the plan—

(1) Any recommendation that is rejected; and

(2) The reasons for rejecting the recommendation.

(Sec. 306; 20 U.S.C. 1205)

§ 166a.15 What other requirements must a State educational agency meet?

(a) A State educational agency shall develop a statewide program in which the adult populations in the State that are least educated and most in need of assistance learn most effectively.

(b) A State educational agency shall design a statewide program to allow adult education services to be provided by those agencies that can reach the adult populations most in need. This expansion of the adult education program may require using agencies (i.e., a private for-profit organization) other than applicants eligible for subgrants under the Act.

(H.R. Rept. No. 95–1137, p. 128; Sen. Rept. No. 95–856, p. 103)

(c) If a private for-profit organization is used, a State educational agency or eligible applicant shall enter into a contractual arrangement for the provision of adult education services. A contract shall be entered into only upon a determination by a State or eligible applicant that—

(1) The contract is in accordance with State and local law and Subpart P, Procurement Standards, 45 CFR Part 74; and

(2) The service to be provided will constitute a reasonable and prudent use of funds available under the State plan.

(d) A State educational agency or eligible applicant may enter into a voluntary arrangement with a private for-profit organization for the provision of adult education services. For example, an eligible applicant may enter into a voluntary arrangement with a business organization for the use of facilities, personnel, or other services.

(e) At least annually a State educational agency shall give the representatives listed in § 166a.14(a) of these regulations the opportunity to comment on—

(1) How the State educational agency is carrying out the plan; and

(2) The expansion of the delivery system for providing adult education services.

(f) A State educational agency shall consider the comments submitted under paragraph (e) of this section in carrying out its State plan. A State educational agency shall include a summary of these comments in its subsequent three-year plan.

(Sec. 306(b) (7), (8); 20 U.S.C. 1205)

Subpart C—State Advisory Councils

§ 166a.21 What are a State's responsibilities regarding State advisory councils?

(a) A State that receives funds under section 304 of the Act may establish and maintain a State advisory council, or may designate and maintain an existing State advisory council.

(b) A State advisory council that is funded solely from non-Federal sources that are not part of State or local

matching funds is not required to comply with the requirements of §§ 166a.22 through 166a.27.

(Sec. 312(a); 20 U.S.C. 1210)

§ 166a.22 How is a State advisory council established?

A State advisory council shall be appointed by the Governor or, in the case of a State in which members of the State board that governs the State educational agency are elected (including election by the State legislature), by that board.

(Sec. 312(a); 20 U.S.C. 1210)

§ 166a.23 How is the membership of a State advisory council determined?

(a) The membership of a State advisory council shall include a significant proportion of women, the elderly, minorities, and the educationally disadvantaged in the State in order to reflect the diverse interests and needs of the adult population served by the Act.

(b) The membership of the council shall be organized to include—

(1) Persons who, by reason of experience or training, are knowledgeable in the field of adult education or who are officials of the State educational agency or of local educational agencies of that State;

(2) Persons who are receiving or who have received adult education services; and

(3) Persons who are representative of the general public.

(Sec. 312(b); 20 U.S.C. 1210)

§ 166a.24 How is the membership of a State advisory council certified?

(a) A State educational agency shall notify the Commissioner of the establishment of, and membership of, its State advisory council.

(1) The notification shall be attached to the State plan or be submitted at a subsequent time in cases where a State advisory council is established after the State plan has been approved.

(2) The notification shall include the name, education, experience, and current position of each person serving on the State advisory council and shall specify which interest under § 166a.23(b) each person represents.

(b) Upon receiving the notification, the Commissioner shall, as appropriate certify that the council membership is in compliance with the requirements set forth in the Act and in § 166a.23(b) of these regulations.

(Sec. 312(c); 20 U.S.C. 1210)

§ 166a.25 What are the functions and responsibilities of a State advisory council?

A State advisory council shall—

(a) Advise the State educational agency on the development and administration of the State plan approved under the Act and the regulations in this part;

(b) Advise the State educational agency on policy matters arising in the administration of the State plan approved under the Act and the regulations in this part;

(c) Advise the State educational agency with respect to long-range planning;

(d) Advise the State educational agency with respect to studies to evaluate adult education programs, services, and activities assisted under the Act; and

(e) Prepare and submit an annual report of its recommendations to—

(1) The State educational agency; and

(2) The National Advisory Council on Adult Education, established under section 313 of the Act. A copy of any comments of the State educational agency, as that agency considers appropriate, shall be included with this report.

(Sec. 312(b); 20 U.S.C. 1210)

§ 166a.26 What are the requirements for State advisory council meetings?

(a) A State advisory council shall meet within 30 days after certification by the Commissioner and select from its membership a chairperson.

(b) A State advisory council shall meet at least four times each year.

(1) Except as provided in paragraph (a) of this section, the time, place, and manner of subsequent meetings shall be provided by the rules of the State advisory council.

(2) At least one of the meetings each year shall be an open meeting, at which members of the public are given the opportunity to express views concerning adult education.

(Sec. 312(d); 20 U.S.C. 1210)

§ 166a.27 What costs are allowable?

(a) A State advisory council may obtain the services of professional, technical, and clerical personnel as may be necessary to enable it to carry out its functions under the Act.

(b) Members of a State advisory council and its staff, while serving on the business of the council, may receive subsistence, travel allowances, and compensation in accordance with State law, regulations, and practices applicable to persons performing comparable duties and services.

(c) Costs incurred under paragraphs (a) and (b) of this section shall be included as part of the administrative expenditures reported by the State.

(Sec. 312(e); 20 U.S.C. 1210)

Subpart D—How a Grant Is Made to a State

§ 166a.31 How is the amount of each State's grant determined?

(a) The Commissioner determines the amount of each State's grant according to the formula in section 305(a) of the Act.

(b) The Commissioner, from a one percent reserve, determines the amount of the grants to American Samoa, Guam, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands.

(Sec. 305; 20 U.S.C. 1206)

§ 166a.32 What is each State's limitation on administrative costs?

The Commissioner notifies each State annually of the maximum amount allowable for administrative activities under section 315(b) of the Act. The non-Federal share of funds available under the State plan may also be used to pay administrative costs.

(Sec. 315; 20 U.S.C. 1211)

Subpart E—How To Apply to the State for a Subgrant

§ 166a.41 Who is eligible for a subgrant?

(a) A State educational agency shall distribute grants on the basis of annual applications submitted by eligible applicants. Eligible applicants are local educational agencies and public or private nonprofit agencies, organizations, and institutions.

(b) A State educational agency may not review an annual application from a public or private nonprofit agency, organization, or institution other than a local educational agency unless this applicant—

(1) Provides documentation to the State that advice on the development of its annual application has been sought from the applicable local educational agency. For the purpose of this section, "applicable local educational agency" refers to the legally constituted public board of education or administrative agency located in the same city, county, township, school district, or other political subdivision of the State to be served by the application; and

(2) Provides the local educational agency the opportunity to comment on the application prior to submitting it to the State.

(c) A State that is prohibited by State law from awarding Federal funds by grant or contract to public or private nonprofit agencies, other than local educational agencies, shall—

(1) Include in its State plan the legal basis of this prohibition; and

(2) Give priority to local educational agencies that propose to enter into cooperative arrangements with public or private nonprofit agencies for the delivery of services.

(d) A State educational agency shall give public notification of the availability of Federal and State funds to eligible applicants.

(1) For the purpose of notifying local educational agencies, a State educational agency shall provide the notice directly.

(2) For the purpose of notifying public or private nonprofit agencies, organizations, and institutions, a State educational agency shall give sufficient public notice throughout all regions of the State.

(Secs. 304, 306(b)(7); 20 U.S.C. 1203)

Subpart F—How a Subgrant Is Made to an Applicant

§ 166a.51 How will a State review annual applications?

(a) A State educational agency shall review annually all applications submitted by eligible applicants to determine if the requirements of § 166a.41 are satisfied. A State educational agency shall disapprove applications that fail to meet the requirements of § 166a.41.

(b) In evaluating the quality of applications, a State educational agency shall employ a competitive process that considers the best possible combination of agencies, organizations, and institutions. In developing objective criteria for review of applications, a State educational agency shall take into account the following factors:

(1) The needs of the population to be served by the applicant.

(2) The extent to which the applicant proposes projects to reach adult populations least educated and most in need of assistance.

(3) The extent to which the applicant gives special emphasis to adult basic education projects.

(4) The adequacy of outreach activities, including—

(i) Flexible schedules to accommodate the greatest number of adults who are least educated and most in need of assistance;

(ii) Locations of facilities offering programs that are convenient to large concentrations of the adult populations identified by the State in response to § 166a.13(c) of these regulations or how the locations of facilities will be convenient to public transportation; and

(iii) The availability of day care services to participants in the project.

(5) The extent to which cooperative arrangements with other agencies will be used for delivering adult education and support services.

(6) The resources available to the applicant—other than Federal and State adult education funds—to meet these needs (e.g., the Comprehensive Employment and Training Act (CETA), Title XX of the Social Security Act, local cash or in-kind contributions).

(7) The extent to which the proposed activity addressed the identified needs.

(8) The extent to which the project objectives can be accomplished within the amount of the budget request.

(c) A State educational agency shall describe in its State plan the method of determining the amount of funds to be distributed to applicants approved for funding.

(d) A State educational agency that is prohibited by State law from awarding Federal funds by grant or contract to public or private nonprofit agencies, other than local educational agencies, shall describe in its State plan how priority will be given to local educational agencies that propose to enter into cooperative arrangements with public or private nonprofit agencies for the delivery of services.

(Secs. 304, 306; 20 U.S.C. 1205)

Subpart G—Conditions That Must Be Met by a State

§ 166a.61 What are the matching requirements of the program?

(a) The Federal share of expenditures made under the State plan shall not exceed 90 percent.

(b) No matching is required for American Samoa, Guam, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands.

(c)(1) The non-Federal share of expenditures under the State plan shall be the difference between the Federal share and the total expenditures for the purposes for which the Federal share is paid.

(2) The non-Federal share of expenditures under the State plan may be computed on a statewide basis and may come from any source other than Federal assistance so long as these expenditures are made to further the purposes of the State plan approved under this part.

(Sec. 307; 20 U.S.C. 1206)

§ 166a.62 What are the maintenance of effort requirements of the program?

(a)(1) To be eligible for Federal funds a State shall maintain its fiscal effort.

(2) A State shall expend for adult education from non-Federal sources an amount equal to the fiscal effort of the State in the preceding fiscal year.

(3) A State may determine its fiscal effort on a per student basis or on a total expenditure basis.

(b) The Commissioner does not make any payment to a State in any fiscal year unless the Commissioner finds that the fiscal effort of a State for adult education for the preceding fiscal year was not less than the fiscal effort expended for adult education purposes during the second preceding fiscal year.

(Sec. 307; 20 U.S.C. 1206)

§ 166a.63 How is a maintenance of effort waiver granted?

(a) During the life of the Act, the Commissioner may waive for *one* fiscal year only the maintenance of effort requirement in section 307(b) of the Act if the Commissioner determines it would be equitable to do so in view of exceptional and unforeseen circumstances affecting the State.

(b)(1) If a State educational agency wishes to receive a waiver from the maintenance of effort requirement under §166a.62(a) of these regulations, the State educational agency shall submit a request for a waiver with its three-year State plan or as an amendment to the plan.

(2) A State educational agency shall include in the request for a waiver the reason for the request and any additional information the Commissioner may require.

(Sec. 431A (GEPA); 20 U.S.C. 1232–1)

§ 166a.64 What are exceptional and unforeseen circumstances?

(a) The Commissioner considers exceptional and unforeseen circumstances to include situations in which the local educational agency or the State had no control of the events resulting in decreased expenditures but made a reasonable effort in a timely fashion to comply with the maintenance of effort requirement of the Act.

(b) Exceptional and unforeseen circumstances include, but are not limited to, the following situations:

(1) A sudden, substantial reduction in available revenue due to—

(i) A natural or man-made disaster;

(ii) The unforeseen removal of property from the tax roll by government action; or

(iii) The unforeseen departure of an industrial or commercial facility.

(2) A sudden and substantial diversion of available revenue to other purposes outside the control of the local educational agency or the State.

(3) Decreased expenditures by the State that are directly attributable to

strikes involving educational or service personnel or both.

(4) Reductions of services to adults that are directly attributable to energy shortages or conservation measures resulting in a general reduction of educational services throughout the State or any of its local educational agencies.

(Sec. 431A (GEPA); 20 U.S.C. 1232–1)

§ 166a.65 How is maintenance of effort computed in the event of a waiver?

(a) In any case in which the Commissioner grants a waiver to a State under these regulations, the Commissioner reduces the amount of the Federal payment to that State for the current fiscal year in the exact proportion to which the fiscal effort of the State was less than 100 percent of its fiscal effort for the second preceding fiscal year. For example, if a State, having received a waiver under this section, reduced its expenditures in the preceding fiscal year 20 percent below the second preceding fiscal year, the Commissioner reduces the amount of the Federal payment for the current fiscal year by 20 percent.

(b) Fiscal effort for the year following the year for which a waiver is granted shall be based on the level of effort that existed prior to the waiver. For example, if in FY 1981 a State receives a waiver for its failure in FY 1980 to maintain fiscal effort at the level established in FY 1979, the State shall compute its fiscal effort for FY 1981 on the basis of the fiscal effort for FY 1979.

(Sec. 431A (GEPA); 20 U.S.C. 1232–1)

§ 166a.66 What are the percentage requirements with respect to State distribution of Federal funds?

(a) The percentage requirements in this section are applicable to a State's grant under section 305 of the Act.

(b) A State educational agency may expend an amount not to exceed 20 percent of its grant for programs of equivalency for a certificate of graduation from a secondary school.

(c) A State educational agency shall expend an amount not less than 10 percent of its grant for special experimental demonstration projects and teacher training projects described in §§ 166a.71 through 166a.74.

(d) A State educational agency may expend an amount not more than 20 percent of its grant for the education of institutionalized adults.

(Secs. 304, 306, 310; 20 U.S.C. 1203, 1205, 1208)

Subpart H—State-administered Special Experimental Demonstration Projects and Teacher Training Projects

§ 166a.71 Who are the eligible applicants for these projects?

(a)(1) Eligible applicants include any State of local educational agency or public or private nonprofit agency, organization, or institution.

(2) Unless precluded by State law, individuals are eligible applicants.

(b) A State may award funds under this subpart to eligible applicants outside the boundaries of the State if that award is determined to be in the best interest of the State in meeting its priorities and the purposes of the Act.

(Sec. 310; 20 U.S.C. 1208)

§ 166a.72 What are the criteria and priorities in administering these projects?

(a)(1) A State educational agency shall establish its own statewide criteria and priorities for administering special projects and teacher training projects.

(2) A State educational agency shall include the criteria and priorities in the State plan.

(3) In establishing statewide criteria and priorities, a State educational agency shall give consideration to serving adults who are least educated and most in need of assistance.

(b)(1) The Commissioner publishes national priorities in adult education in the Federal Register.

(2) Each State shall indicate in its State plan how the statewide criteria and priorities relate to published national priorities.

(Sec. 310; 20 U.S.C. 1208)

§ 166a.73 How will a State administer these projects?

(a) A State educational agency shall—

(1) Administer these projects consistent with the other regulations listed in 45 CFR 166.3 of these regulations;

(2) Make a general announcement of the availability of Federal and State funds for special projects and teacher training projects;

(3) Establish procedures for submitting and reviewing applications. These procedures shall be consistent with Subparts D and E of 45 CFR Part 100b of EDGAR; and

(4) Distribute funds to applicants approved for funding on the basis of the criteria and priorities developed under § 166a.72 of these regulations.

(b) A State educational agency may—

(1) Approve projects for a multi-year period; and

(2) In accordance with State law, policies, and procedures, make provisions for stipends and travel allowances for participants in teacher training projects.

(Sec. 310; 20 U.S.C. 1208)

§ 166a.74 How will the results be disseminated?

(a)(1) A State educational agency shall develop and describe in its State plan the procedures for disseminating results of these activities.

(2) A copy of each final report of special projects and teacher training projects supported under this subpart shall be sent to—

(i) The Commissioner; and

(ii) The adult education information clearinghouse authorized by section 309(a)(1)(C) of the Act.

(Secs. 435 (GEPA), 310; 20 U.S.C. 1208)

PART 166b—NATIONAL ADULT EDUCATION DEVELOPMENT AND DISSEMINATION PROGRAM AND PLANNING GRANTS

3. A new Part 1666 is added as follows:

Subpart A—General

Sec.

166b.101 How do the National Adult Education Development and Dissemination Program and Planning Grants relate to the overall adult education program?
166b.102 Who is eligible to apply for a grant?
166b.103–166b.110 [Reserved]

Subpart B—Kinds of Projects the Office of Education May Assist Under These Programs

166b.111 What types of projects may be funded?
166b.112–166b.120 [Reserved]

Subpart C—How To Apply for a Grant

166b.121 What must an application for a grant contain?
166b.122 What is the duration of a project grant?
166b.123–166b.130 [Reserved]

Subpart D—How a Grant Is Made

166b.131 How does the Commissioner evaluate an application?
166b.132 What selection criteria does the Commissioner use?
166b.133–166b.140 [Reserved]

Subpart E—Conditions That Must Be Met by a Grantee

166b.141 What are the cost requirements under this program?
166b.142 What documents must a State educational agency have on file with the Commissioner to be eligible for a planning grant?
166b.143 What records and reports are required of the grantee?
166b.144–166b.200 [Reserved]

Authority: Secs. 301–318 of Pub. L. 91–230, as amended by Title XIII of Pub. L. 95–561, 92

Stat. 2356, 20 U.S.C. 1201–1211c, unless otherwise noted.

Subpart A—General

§ 166b.101 How do the National Adult Education Development and Dissemination Program and Planning Grants relate to the overall adult education program?

(a) *Program description.* This program provides Federal assistance for development, demonstration, and dissemination projects that will improve or be of national significance to the adult education program. Planning grants provide Federal assistance to State educational agencies to plan for the expansion of their systems for the delivery of adult education services. This program is authorized under section 309 of the Act.

(b) *Other applicable provisions.* The provisions of 45 CFR 166.1 through 166.4 of Part 166 apply to the National Adult Education Development and Dissemination Program and Planning Grants under this part.

(Sec. 309; 20 U.S.C. 1207a)

§ 166b.102 Who is eligible to apply for a grant?

(a) For a planning grant, only a State educational agency is eligible to apply.

(b) For all other projects, eligible applicants include public and private nonprofit agencies, institutions, and organizations.

(Sec. 309; 20 U.S.C. 1207a)

Subpart B—Kinds of Projects the Office of Education May Assist Under These Programs

§ 166b.111 What types of projects may be funded?

(a) The Commissioner may fund projects and activities that improve and promote effective adult education programs and further the purposes of the Act by—

(1) Carrying out demonstration activities; and

(2) Developing, evaluating, and disseminating systems, materials, new approaches, and innovative methods.

(b) The Commissioner may award a planning grant to a State educational agency to plan the expansion of its adult education delivery system that—

(1) Involves adults with less than a high school education and those adults who are least educated and most in need of assistance in the process of identifying the adult education needs within the State;

(2) Develops a coordinated strategy to meet the adult education needs of the State; and

(3) Involves local educational agencies, business, industries, community organizations, and other institutions.

(c) Projects under paragraph (a) of this section shall address national priorities established and announced in the **Federal Register** by the Commissioner. The Commissioner will invite public comment on the national priorities.

(d) Projects for the development of curricula or instructional materials shall be conducted in accordance with section 426 of the General Education Provisions Act.

(e) The Commissioner may fund one or more of the types of projects described in paragraphs (a) and (b) of this section by publishing a notice in the **Federal Register.**

(Sec. 309; 20 U.S.C. 1207a)

Subpart C—How To Apply for a Grant

§ 166b.121 What must an application for a grant contain?

An application shall contain—

(a) Information required by the Notice of Closing Date published in the **Federal Register;**

(b) Information that meets the application content requirements of 45 CFR 100a.108 through 100a.116 of EDGAR;

(c) For a multi-year or for subsequent years of a development or dissemination project, information that meets the requirements of 45 CFR 100a.117, 100a.118, and 100a.250 through 100a.253 of EDGAR; and

(d) Any additional information required by the Commissioner in the application package.

(Sec. 309; 20 U.S.C. 1207a)

§ 166b.122 What is the duration of a project grant?

(a) A grant period is for not more than one year.

(b) Development and dissemination projects may be approved for a multi-year period.

(c) Planning grants may be approved for a period of not more than one year.

(Sec. 309; 20 U.S.C. 1207a)

Subpart D—How a Grant Is Made

§ 166b.131 How does the Commissioner evaluate an application?

(a) The Commissioner evaluates an application on the basis of the criteria in § 166b.132 of these regulations.

(b) The Commissioner awards up to 100 possible points for these criteria.

(c) The maximum possible score for each complete criterion is indicated in parentheses after the heading for that criterion.

§ 166b.132 What selection criteria does the Commissioner use?

(a) *Plan of operation* (40 points).

(1) The Commissioner reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Commissioner looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) In the case of projects offering educational services, a clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(b) *Quality of key personnel* (20 points).

(1) The Commissioner reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Commissioner looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(3) To determine the qualifications of a person, the Commissioner considers evidence of past experience and training in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness* (15 points).

(1) The Commissioner reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Commissioner looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan* (10 points).

(1) The Commissioner reviews each application for information that shows the quality of the evaluation plan for the project. (See 45 CFR 100a.590 of EDGAR—Evaluation by the grantee.)

(2) The Commissioner looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources* (15 points).

(1) The Commissioner reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Commissioner looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(20 U.S.C. 1221e-3(a)(1))

Subpart E—Conditions That Must Be Met by a Grantee

§ 166b.141 What are the cost requirements under this program?

(a) Allowable costs under grants awarded under section 309 of the Act are determined in accordance with the applicable cost principles of 45 CFR 100a.530 through 100a.534 of EDGAR and Subpart Q of 45 CFR Part 74.

(b) No cost sharing is required.

(c) Neither stipends nor dependency allowances are allowable.

(d) Projects combining funds under section 309 of the Act with other Federal, State, or local funds shall contain provisions for separate accounting.

(Sec. 309; 20 U.S.C. 1207a)

§ 166b.142 What documents must a State educational agency have on file with the Commissioner to be eligible for a planning grant?

A State educational agency must have on file with the Commissioner—

(a) An approved three-year plan. Regulations governing the development, submission, and approval of the plan are in 45 CFR 166.1 through 166a.74 of these regulations.

(b) A single State application required by section 435 of the General Education Provisions Act.

(Sec. 309; 20 U.S.C. 1207a)

§ 166b.143 What records and reports are required of the grantee?

(a) A grantee shall keep records that meet the requirements in 45 CFR 100a.730 through 100a.734 of EDGAR.

(b) A grantee shall submit reports as part of the financial and performance reporting requirements in 45 CFR 100a.720 of EDGAR and Subparts I and J of 45 CFR Part 74.

(Sec. 309; 20 U.S.C. 1207a)

PART 166 C —ADULT EDUCATION PROGRAMS FOR IMMIGRANTS AND INDOCHINA REFUGEES

4. A new Part 166c is added as follows:

Subpart A—General

166c.201 How do the Adult Education Programs for Immigrants and Indochina Refugees relate to the overall adult education program?

166c.202 Who is eligible to apply for a grant?

166c.203–166c.210 [Reserved]

Subpart B—Kinds of Projects the Office of Education May Assist Under These Programs

166c.211 What is a special adult education project for immigrants or Indochina refugees?

166c.212 What are eligible activities under the special adult education programs for immigrants and Indochina refugees?

166c.213 What is the special population to be served by a project?

166c.214–166c.220 [Reserved]

Subpart C—How to Apply for a Grant

166c.221 What must an application for a grant contain?

166c.222 State review of applications.

166c.223 What is the duration of Federal support?

166c.224–166c.230 [Reserved]

Subpart D—How a Grant is Made

166c.231 How does the Commissioner evaluate an application?

166c.232 What selection criteria does the Commissioner use?

166c.233–166c.240 [Reserved]

Subpart E—Conditions That Must Be Met by a Grantee

166c.241 What are the cost requirements under these programs?

166c.242 What records and reports are required of the grantee?

166c.243–166c.300 [Reserved]

Appendix A—Priorities for Programs of National Significance.

Appendix B—Comments and Responses.

Authority: Secs. 301–318 of Pub. L. 91–230, as amended by Title XIII of Pub. L. 95–561, 92 Stat. 2356, 20 U.S.C. 1201–1211c, unless otherwise noted.

Subpart A—General

§ 166c.201 How do the Adult Education Programs for Immigrants and Indochina Refugees relate to the overall adult education program?

(a) *Program description.* These programs provide Federal assistance to operate special adult education projects for immigrants and for Indochina refugees. These programs are authorized under sections 318 and 317 of the Act.

(b) *Other applicable provisions.* The provisions of §§ 166.1 through 166.4 of 45 CFR Part 166 apply to the Adult Education Programs for Immigrants and Indochina Refugees under this part.

(Secs. 318, 317; 20 U.S.C. 1211c, 1211b)

§ 166c.202 Who is eligible to apply for a grant?

(a) Only the following are eligible to apply for a grant to operate an adult education project for immigrants:

(1) State educational agencies.

(2) Local educational agencies.

(3) Public nonprofit agencies, organizations, or institutions.

(4) Private nonprofit agencies, organizations, or institutions.

(b) Only the following are eligible to apply for a grant to operate an adult education project for Indochina refugees:

(1) State educational agencies.

(2) Local educational agencies.

(Secs. 318, 317; 20 U.S.C. 1211c, 1211b)

Subpart B—Kinds of Projects the Office of Education May Assist Under These Programs

§ 166c.211 What is a special adult education project for immigrants or Indochina refugees?

The Commissioner funds projects that—

(a) Enable adult immigrants or adult Indochina refugees to acquire basic skills necessary to function in American society; and

(b) Contribute to the employability of adult immigrants or adult Indochina refugees through development of basic educational and occupational skills.

(Secs. 318, 317; 20 U.S.C. 1211c, 1211b)

§ 166c.212 What are eligible activities under the special adult education programs for immigrants and Indochina refugees?

Grants awarded under section 318 or 317 of the Act may be used for—

(a) Programs of instruction (including administrative costs of planning and operating these programs) for adult immigrants or Indochina refugees for the purpose of enabling these adults to become employable and productive members of American society. These

programs of instruction may be in English as a second language, basic reading, mathematics, the promotion of language and literacy skills in English, and the development and enhancement of necessary skills, such as consumer, social, survival, occupational, and communication skills.

(b)(1) Adult education programs designed to operate in conjunction with existing Federal and non-Federal programs and activities to develop occupational and related skills for adult immigrants or Indochina refugees, particularly programs authorized under the Comprehensive Employment and Training Act of 1973 (20 U.S.C. 801) or under the Vocational Education Act of 1963, as amended (20 U.S.C 1241).

(2) Where occupational skills programs are otherwise unavailable or insufficient, combined occupational-adult education programs to provide adult immigrants or Indochina refugees with skills necessary to their obtaining employment;

(c) Programs providing educational support services that meet the needs of adult immigrants or Indochina refugees, including but not limited to (1) tutoring (in the case of geographically isolated adult immigrants or Indochina refugees) and (2) guidance and counseling with regard to educational, career, and employment opportunities (such as job placement and job follow-up services); or

(d) Any combination of programs described in paragraphs (a), (b), and (c) of this section.

(Secs. 318(a), 317(a); 20 U.S.C. 1211c, 1211b)

§ 166c.213 What is the special population to be served by a project?

(a) Only adult immigrants, as defined in § 166.4(d)(3) of these regulations, are eligible to participate in projects funded under the adult education program for immigrants.

(b)(1) Except as provided in paragraph (b)(2) of this section, only adult Indochina refugees, as defined in § 166.4(d)(4) of these regulations, are eligible to participate in a project assisted under the adult education program for Indochina refugees. An eligible participant is any Indochina adult refugee who—

(i) Has parole status, as indicated by an INS (Immigration and Naturalization Service) Form I–94;

(ii) Has voluntary departure status, as indicated by INS Form I–94;

(iii) Has conditional entry status, as indicated by INS Form I–94;

(iv) Was admitted to the United States with permanent resident status on or after April 8, 1975 (the date on which the President designated Vietnamese and Cambodians to be refugees under the Migration and Refugee Assistance Act), as indicated by INS Form I–151 or I–551; or

(v) Has permanent resident status as a result of adjustment of status under Pub. L. 95–145, as indicated by INS Form I–151 or I–551.

(Pub. L. 95–145, 8 U.S.C. 1255)

(2) Participation of a very limited number of adults other than Indochina refugees is not precluded where the special needs of the Indochina refugees, as included in the application, are being met. This participation of non-Indochina refugees shall not result in a reduction in the quality or quantity of services to the special population as described in paragraph (b)(1) of this section.

(Secs. 318, 317; 20 U.S.C. 1211c, 1211b)

Subpart C—How to Apply for a Grant

§ 166c.221 What must an application for a grant contain?

An application shall contain—

(a) Information required by the Notice of Closing Date published in the **Federal Register**;

(b) Information that meets the application content requirements of 45 CFR 100a.108 through 100a.116 of EDGAR; and

(c) Any additional information required by the Commissioner in the application package.

(Secs. 318, 317; 20 U.S.C. 1211c, 1211b)

§ 166c.222 State review of applications.

(a)(1) An applicant for a grant under the adult education program for immigrants shall first submit a copy of its application to the State educational agency (for the State in which that applicant is located). The State educational agency shall expeditiously review the application in accordance with the provisions of 45 CFR 100a.156 through 100a.159 of EDGAR.

(2) The State educational agency shall include in its comments submitted to the Commissioner whether the application is consistent with the State plan's objectives for meeting the adult education needs of adult immigrants.

(3) The State educational agency shall provide a copy of its comments and recommendations to the applicant.

(b)(1) The Commissioner does not approve an application for a grant under the adult education program for Indochina refugees unless the State educational agency (for the State in which that applicant is located) assures the Commissioner that the proposed activity will not duplicate existing and available (Federal and non-Federal) adult education programs that meet the special needs of adult Indochina refugees.

(2) An applicant shall submit a copy of its application to its State educational agency in accordance with the provisions of 45 CFR 100a.156 through 100a.159 of EDGAR.

(Secs. 318, 317; 20 U.S.C. 1211c, 1211b)

§ 166c.223 What is the duration of Federal support?

(a) A grant period is normally for twelve months but in no event shall it exceed eighteen months.

(b) Projects may be approved for a multi-year period.

(Secs. 318, 317; 20 U.S.C. 1211c, 1211b)

Subpart D—How a Grant is Made

§ 166c.231 How does the Commissioner evaluate an application?

(a) The Commissioner evaluates an application on the basis of the criteria in § 166c.232 of these regulations.

(b) The Commissioner awards up to 100 possible points for these criteria.

(c) The maximum possible score for each complete criterion is indicated in parentheses after the heading for that criterion.

§ 166c.232 What selection criteria does the Commissioner use?

(a) *Plan of operation* (20 points).

(1) The Commissioner reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Commissioner looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program; and

(iv) The way the applicant plans to use its resources and personnel to achieve each objective.

(b) *Quality of key personnel* (15 points).

(1) The Commissioner reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Commissioner looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(3) To determine the qualifications of a person, the Commissioner considers evidence of past experience and training in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness* (5 points).

(1) The Commissioner reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Commissioner looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan* (5 points).

(1) The Commissioner reviews each application for information that shows the quality of the evaluation plan for the project. (See 45 CFR 100a.590 of EDGAR—Evaluation by the grantee.)

(2) The Commissioner looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources* (10 points).

(1) The Commissioner reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Commissioner looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Addressing language and cross-cultural needs* (10 points).

(1) The Commissioner reviews each application for information that shows that the applicant plans to emphasize developing oral and aural English language proficiency.

(2) The Commissioner looks for information that shows—

(i) The use of the best available English language instruction as supported by current valid research findings;

(ii) The use of trained instructional personnel who are native speakers of English or who possess near-native fluency in English; and

(iii) The provision for bilingual personnel and materials in all aspects of the program.

(3) The Commissioner looks for information that demonstrates the applicant's understanding of the cultures of the various immigrant and Indochinese groups served by the programs.

(g) *Need* (10 points.)

(1) The Commissioner reviews each application for information that shows the need for the proposed educational activity.

(2) The Commissioner looks for information that shows—

(i) Specific evidence of the need;

(ii) Where appropriate, current and planned activities in the community relative to the need; and

(iii) Reasonable assurance that the population group to whom the project is addressed will participate in the project if it is available.

(h) *Reaching the geographically isolated* (5 points).

The Commissioner reviews each application for information that shows that the applicant plans to meet the educational needs of previously unserved adult immigrants or adult Indochina refugees living in isolated geographic areas.

(i) *Cooperative arrangements* (20 points).

(1) The Commissioner reviews each application for information that clearly describes cooperative arrangements and support services to be provided by existing agencies, in order to maximize the impact of the proposed project.

(2) The types of agencies with which cooperative arrangements are encouraged include, but are not limited to: Voluntary agencies; sponsor groups; public assistance agencies; social/vocational rehabilitation services; business and industry; social organizations; health services; legal aid; and other agencies operating State and local educational, employment, and training programs.

(20 U.S.C. 1221e-3(a)(1); Secs. 318, 317; 20 U.S.C. 1211c, 1211b)

Subpart E—Conditions That Must Be Met by a Grantee

§ 166c.241 What are the cost requirements under these programs?

(a) Allowable costs under grants awarded under the adult education programs for immigrants and Indochina refugees are determined in accordance with the applicable cost principles of 45 CFR 100a.530 through 100a.534 of EDGAR and Subpart Q of 45 CFR Part 74.

(b) No cost sharing is required.

(c) Neither stipends nor dependency allowances are allowable.

(d) The cost of day care, not to exceed 5 percent of the grant award, may be allowed only if the applicant can demonstrate that—

(1) The absence of this service is a barrier to providing effective educational services; and

(2) The services of volunteers or other community agencies are not available for this purpose.

(e) A grantee may not, under any circumstances, make payments for day care directly to participants.

(f) Transportation costs of participants are allowable up to one percent of the grant award. If more than one percent is necessary, the applicant shall include in its application a justification demonstrating exceptional need.

(g) The cost of developing curriculum materials is allowable up to one percent of the grant award. If more than one percent is necessary, the applicant shall include in its application a justification demonstrating that appropriate materials do not exist or cannot be obtained from existing sources.

(h) The cost of pre-service or in-service training of personnel is allowable up to 5 percent of the grant award. If more than 5 percent is necessary, the applicant shall include in its application a justification demonstrating that the required competence is not otherwise available on a cost-effective basis.

(i) Projects combining funds under the adult education programs for immigrants or Indochina refugees with other Federal, State, or local funds shall contain provisions for separate accounting.

(Sec. 318, 317; 20 U.S.C. 1211c, 1211b)

§ 166c.242 What records and reports are required of the grantee?

(a) A grantee shall keep records that meet the requirements in 45 CFR 100a.730 through 100a.734 of EDGAR.

(b) A grantee shall submit reports as part of the financial and performance reporting requirements in 45 CFR 100a.720 of EDGAR and Subparts I and J of 45 CFR Part 74.

(Sec. 318, 317; 20 U.S.C. 1211c,1211b)

Note.—This appendix A will not be published in Title 45 of the Code of Federal Regulations.

Appendix A—Priorities for Programs of National Significance

For the guidance of State Educational agencies the Commissioner suggests that the following national priorities merit special consideration by States in meeting the special project and staff

development needs of their adult education programs under §§ 166a.71 through 166a.74 of these regulations and section 310 of the Act. These priorities are intended to be responsive to the 1978 amendments to the Adult Education Act.

(1) *Expanding outreach to those adults least educated and most in need.* Evidence indicates that the adult education program is not adequately meeting the needs of significant segments of the adult population that are most in need of and least likely to participate in adult education. New and innovative approaches will be required to expand outreach in order to effectively meet the needs of underserved populations, including adults who are: Older persons; rurally isolated and migrants; located in urban areas of high unemployment; minorities; handicapped; immigrants; refugees; limited in English language proficiency; and women with special needs. In considering support for outreach efforts States should ensure careful attention to innovative plans for informing underserved populations of the availability and benefits of the adult education program and of plans to provide reasonable and convenient access to the program.

States are encouraged to support projects such as those that—(a) Develop new and promising approaches to coordination with business and industry, labor unions, community organizations, and other non-governmental agencies;

(b) Prepare adult education personnel to serve those populations indicated above;

(c) Develop barrier-free and appropriate services based on the needs and life experiences of the learners; and

(d) Use mass media and technological innovations to increase outreach.

(2) *Identifying and preparing for new and emerging roles.* The 1978 amendments to the Adult Education Act emphasize expanded outreach to the least educated adults to enable them to acquire the basic skills necessary to function in society. Adult education personnel will need to perform new or expanded roles to fully implement this objective in the law.

States are encouraged to support projects such as those that—(a) Involve both adult education personnel and adult learners in educational program planning and implementation;

(b) Assist adult education personnel to identify and use non-traditional learning settings in which adult learners can interact with their peers;

(c) Assist in developing the adult's ability to cope with personal and family changes that occur with increased education, independence, and life options; and

(d) Assist adult education personnel to develop their own understanding of and ability to cope with the cultures, life-styles, and mores of the adults they serve, as well as the values and value systems in the American culture.

(e) Develop non-traditional adult education techniques, including, but not limited to, competency assessment and applied performance testing, and train staff in the use of these techniques.

(3) *Mastering basic and life skills necessary to function effectively.* A mastery of basic and life skills is fundamental to the effective functioning of adults in their own environments and in society at large. Without these skills, certifications are meaningless; and opportunities for employment and a productive life are limited.

As a means of addressing this concern, States are encouraged to support projects such as those that—

(a) Assess the statewide educational needs of adults who are least educated and most in need of assistance;

(b) Assess the skill levels of individual adult learners as a basis for providing meaningful and effective developmental experiences with appropriate support services;

(c) Provide curricula designed to enable special adult populations, including adults who are least educated and most in need to function effectively in society;

(d) Develop, demonstrate, and evaluate community-based programs that enable adults to function effectively; or

(e) Develop or adapt alternative high school programs.

(4) *Dissemination in adult education.* Adult education personnel have only limited means for learning of or assessing the kinds and quality of improved practices and products generated in adult education. Many States do not have a mechanism for systematic retrieval, review, assessment, diffusion, and adoption or adaption of improved practices and products. Without these capabilities, programs duplicate effort, lack planning ability, and continue traditional, non-progressive educational strategies. For example, many Adult Performance Level and competency-based adult education products have been developed by States with no effective means of further assessment and dissemination, either statewide or nationally.

States are encouraged to support projects such as those that—

(a) Develop a mechanism to locate improved practices and products and potential users of those practices and products;

(b) Disseminate the practices and products to users; and

(c) Provide training or assistance for adoption or adaption by users.

Note.—This Appendix B will not be published in Title 45 of the Code of Federal Regulations.

Appendix B—Comments and Responses

The following comments, suggestions, and recommendations were received in response to the Notice of Proposed Rulemaking. As explained in the preamble to these final regulations, the citations refer to the appropriate sections of the final regulations rather than to those of the proposed regulations.

§ 166.3 Other applicable regulations.

Comment. A commenter expressed concern that the various civil rights authorities referenced in EDGAR are not sufficient to ensure appropriate governance in the operation of the adult education program. This commenter cited a number of pertinent sections in the regulations requiring compliance with statutory nondiscrimination provisions. Another commenter called for reinstatement from the former State-Federal Agreement for Adult Education of the requirement for development of methods of administration in relation to prohibition of sex discrimination under title IX.

Response. A change is made. The Commissioner agrees that citations to applicable civil rights authorities, when placed within program regulations, prove more effective. The citations have been added in § 166.3 for easy reference. With respect to the suggestion that States submit a method of administration document to implement title IX, it should be noted that neither title IX nor its implementing regulations currently require a State agency carrying out a program of Federal financial assistance to submit methods of administration to assure compliance. If, in the future, the Office for Civil Rights adopts such a requirement, the States will be provided adequate guidance on the development of methods of administration.

§ 166.4(b)(6) Definition—Local educational agency.

Comment. One commenter, while supporting the intent to expand the system of deliverers of adult educational services, believes that public and private nonprofit agencies, organizations, and institutions should be declared as local educational agencies. More specifically, the commenter

proposes that libraries qualify as local educational agencies.

Response. No change is made. The term "local educational agency" is defined in the Act and in EDGAR. The language offers a clear distinction between local educational agencies and public and private nonprofit agencies, organizations, and institutions. Therefore, the definition contained in EDGAR is referenced in § 166.4(b)(6).

§ 166.4(d)(2) Program definitions—Expansion.

Comment. Several commenters addressed the restrictiveness of the definition of "expansion" in that it focuses on quantitative change and does not take into account any qualitative changes. An example was offered—agencies could serve fewer adults with better programs for a longer period of time. Another commenter pointed to the additional costs imposed by inflation and program refinement and to the possibility that a fixed appropriation of funds could actually cause a decrease in numbers of adults served. Recognition of the efforts made by deliverers of educational services to reach those areas not previously served by the State was also suggested.

Response. The definition of expansion has been changed to accommodate the recommendations. A measurable element denoting quality has been added in § 166.4(d)(2). The regulations now define expansion as an increase in the number of agencies, institutions, and organizations—other than local educational agencies—used to provide adult education and support services plus *one or both* of the following two conditions: an increase in the number of adults least educated and most in need of assistance participating in the adult education program; *and/or* an increase in the percentage of these adults who met their educational objectives.

§ 166.4(d)(5) Program definitions—Institutionalized person.

Comment. One commenter suggested that the types of institutions be omitted from the definition of "institutionalized person," with that specificity left to the discretion of the funding agency. At the other extreme, commenters offered additional types of institutions. Among those suggested were substance abuse treatment facilities, residential facilities for the elderly, and nursing homes. Another commenter believes the definition is too broad and promotes competition with elementary and secondary school programs.

Response. A change is made. The Commissioner agrees that the specifics of defining environmental settings should be left to the funding agency. The definition is changed accordingly. It is also changed to show that the institutionalized person shall be an adult, as defined by the Act.

§ 166.4(d)(6) Program definitions—Limited English proficiency or limited English language skills.

Comment. One commenter questioned the use of the term "limited English proficiency" rather than "limited English language skills."

Response. A change is made. The Act uses three terms—"Adults with limited English language skills," "persons of limited English-speaking ability," and "persons with limited English proficiency" (sections 306(b) (1), (8), and (11), 310(1) (A) and (B), and 313(b)). The Commissioner believes that these terms are interchangeable. Since both "adults with limited English language skills" and "persons with limited English proficiency" are used in these regulations, § 166.4(d)(6) has been revised to encompass both terms.

Comment. Several commenters called for inclusion of the verbatim language of the definition in title VII of the Elementary and Secondary Education Act (ESEA) of 1965, as amended. Another commenter requested that the definition clarify the meaning of bilingual adult education. And one commenter questioned the use of "sufficient difficulty" as a qualifier for those to be served.

Response. The definition, as contained in § 166.4(d)(6), while not verbatim, has a like meaning to that included in title VII of ESEA. It was reworded for clarity and understanding. At the Commissioner's discretion, the definition has been tailored for purposes of adult education. No change is made in the definition.

The regulations have been changed in § 166a.12(d) to include program assurances to be signed by an authorized official of the State educational agency. Assurance (6) of that section addresses bilingual adult education.

§ 166.4(d)(7) Program definitions—Outreach.

Comment. A number of commenters expressed the concern that the definition should clearly describe "outreach" as both bringing the adult to the program and bringing the program to the adult. Commenters offered amended language to specifically include: Home instruction for the stationary poor and the socially and physically isolated; televised programs; telephone-assisted programs; and instructional settings where elderly persons congregate, such as senior centers, congregate meal sites, and residential facilities. One commenter viewed a delivery system which is culturally and socially compatible to these adult groupings as an important ingredient for effective outreach.

Response. No change is made. Providing reasonable and convenient access to adult education programs should not be interpreted as designating a specific location for delivery of services. The intent of outreach activities is that the State and local deliverers of adult education services must not only support activities designed to publicize the program but that they must also include efforts to facilitate the participation of eligible persons once those persons become aware of the program. Efforts should be made to create learning situations that are compatible with the educational, social, and psychological needs of participants. The definition allows a State the discretion to perform outreach activities in a manner that most effectively meets the needs of those adults in the State who are least educated and most in need of educational assistance. The Commissioner believes that outreach activities should be broadly construed.

§ 166.4(d) Additional program definitions.

Comment. One commenter suggested that the Adult Performance Level (APL) criteria be addressed in the regulations as a method for identifying adults "least educated and most in need."

Response. No change is made. Each of the three APL levels is related to educational attainment, economic level, and occupational status. States may wish to use these criteria and other indicators of functional competency in setting goals and program policy. Although there are many ways of measuring levels of economic and educational attainment, these measures are best determined at the State and local levels to assure program flexibility and to meet local needs. Therefore, it would be inappropriate to prescribe any particular method of defining the least educated and most in need.

Comment. A commenter suggested that definitions are needed for the terms—"most in need," "rural areas," and "urban areas." Commenters requested clarification of the term "fraternal organizations" referenced under participatory planning agencies and groups under § 166a.14(a)(7).

Response. A change is made. The Commissioner believes that definitions for the first three terms should be left to the discretion of the individual States.

The reference to fraternal organizations in § 166a.14(a)(7) has been changed to fraternal/sororal organizations to clearly indicate that either men's or women's organizations could meet this planning requirement.

§ 166a.10 Purpose of the adult education State-administered program.

Comment. A number of commenters have expressed concern that the regulations do not address the three purposes of section 302 of the Act in relation to the Adult Performance Level (APL) research and subsequent Competency-based Adult Education (CBAE) developmemts.

Response. No change is made. The findings of the APL project have greatly influenced both the wording and the intent of the Statement of Purpose in section 302 of the Act. It is also recognized that the development of APL-based and CBAE programs throughout the Nation are positive and appropriate responses to the need to fulfill these purposes. However, it is inappropriate for the regulations to go beyond the law in requiring any specific approach to instruction. The regulations intentionally provide State and local agencies the flexibility to determine and implement the types of programs appropriate to the needs of adults in each State.

§ 166a.11 The State plan as an application.

Comment. One commenter feels Congress did not intend for States to "apply" for grants and that the State plan is simply a document of compliance.

Response. No change is made. Three requirements in section 306 of the Act are specified as a pre-condition to a State's eligibility to receive its allotment. One of these conditions is a State plan that describes the planned use of funds provided under this title. While there are compliance items contained in the State plan, the main purpose of the document is to set forth a program for the use of funds. The Commissioner has authority to approve or disapprove State plans under section 306(c). A State will not receive its allotment until the Commissioner determines that the proposed use of funds is acceptable under the law and these regulations. Therefore, the State plan is considerably more than a compliance document. It is also an agreement between the State and the Federal Government on the proposed use of funds that will be monitored by both parties.

§ 166a.12(d)(2) Adult secondary education.

Comment. A commenter suggested that the regulations contain more specific requirements to establish programs which provide secondary level education. Another commenter noted that lack of a high school diploma is still a barrier to entering the work force and advancing on the job.

Response. No change is made. Enabling adults who so desire to complete secondary school remains one of the purposes of this legislation as described in section 302 of the Act. However, two other provisions of the Act must also be considered when setting State priorities. Section 306 limits the expenditure of Federal funds for programs leading to completion of secondary school to 20 percent. Section 306 also requires that special emphasis be given to adult basic education programs except where these needs are shown to have been met in a State. Therefore, while secondary level instruction is clearly provided for in the legislation, it is also clear that it is not intended to be the major purpose of the program. A State must describe in its State plan the needs of all segments of the population as they relate to the purposes of the Act, including completion of secondary school.

A State is required under § 166a.12(d)(2) to provide assurance that not more than 20 percent of the State's allotment will be expended for programs of equivalency for a certificate of graduation from a secondary school.

§ 166a.12(d)(4) Tuition and fees.

Comment. Several commenters suggested that the regulations contain a statement relative to tuition and fees for adult education participants.

Response. A change is made. The regulations issued in 1975 and in effect immediately preceding the enactment of the 1978 amendments for the State-administered adult education program contained a prohibition on charging tuition, fees, or any other charges to adults enrolled in adult basic education programs. This provision was inadvertently omitted in the proposed regulations.

The prohibition on charging tuition and fees for adult basic education is an important requirement, especially in light of the legislative emphasis on serving those adults who are least educated and most in need of educational assistance. These adult participants are the ones least likely to have adequate financial resources to defray these costs. The State plan requirement is included as an assurance in § 166a.12(d)(4).

§ 166a.12(d) Program assurances.

Comment. One commenter questioned the rationale for placement of program assurances in an appendix rather than within the text of the regulations.

Response. A change is made. The Commissioner has determined that the program assurances would be more easily referenced if placed within the regulations. The assurances are now contained in § 166a.12(d).

§ 166a.12(d)(6) Bilingual adult education.

Comment. A commenter suggested that a State plan provide for the implementation of instructional programs of bilingual education. Another commenter recommended that the regulations require the submission of a State bilingual education plan. For the purpose of developing and disseminating materials for use in bilingual education classes, a commenter believes a Curriculum Development Center should be established.

Response. A program assurance regarding special assistance through bilingual adult education instruction for persons with limited English proficiency has been added in § 166a.12(d)(6). The Commissioner believes that the State plan requirements under § 166a.13 will adequately show the needs, goals, and activities relating to adults with limited English language skills. Therefore, the Commissioner does not find a separate State bilingual education plan necessary.

The legislation makes no provision for establishing a Curriculum Development Center for bilingual education. However, a State is not precluded from using its funds under section 310 of the Act for a Center of this nature. No other change is made in the regulations.

§ 166a.13(c) Addressing the educational needs of all segments of the adult population in a State.

Comment. The provision that generated the greatest number of comments was the listing of "special adult populations" to be included in the State plan's description of the educational needs of adults in the State. While many of the commenters endorsed the nine population groups specifically identified in this listing, others questioned the necessity for their separate designation since the regulation already required a description of the needs of *all* segments of the adult population in the State. Still others proposed the addition of other

population groups that they felt had in the past been outside the mainstream of the delivery system.

In addition, many of the commenters interpreted this provision as a set-aside or percentage funding requirement for these identified populations.

Response. A change is made. It was not the intent of the proposed regulations to establish funding requirements not contained in the Act. After extensive deliberations on all facets of this issue, the Commissioner has decided to eliminate from § 166a.13(c) the emphasis given to *any* special adult population. The list contained in the proposed regulations was so extensive that no segment of the population was singled out for special treatment. Nevertheless, all the special populations will still be accommodated because the States are clearly directed to describe in their three-year plans the adult education needs of all segments of the adult population in their States and to describe specifically the needs of those adults who are least educated and most in need of assistance. This change in the regulations is compatible with the primary thrust of the legislation, which is to reach the least educated and most in need.

§ 166a.13(d) Other Federal and non-Federal resources.

Comment. One commenter requested that the requirement to identify resources available to meet adult education needs in the State be deleted from the regulations.

Response. No change is made. The State plan requirement to identify other resources in the State available to meet the educational needs of adults is taken directly from the statute in section 306(b)(4).

§ 166a.13(e)(2) State plan goals.

Comment. Referring to the requirement that a State plan include the expenditures for reaching each of the State's identified goals, several commenters suggested inserting the modifier "estimated" before expenditures.

Response. The recommendation is accepted. Since a State must set forth the expenditures covering a three-year period, the Commissioner believes it is appropriate to direct a State to project its best estimate of expenditures covering this period. Therefore, the regulation is changed to include "estimated" before expenditures in § 166a.13(e)(2).

Comment. A commenter suggested that a State educational agency be required to describe personnel in relation to proposed program activities and estimated expenditures.

Response. No change is made. While a State educational agency may desire to show this degree of specificity, the Commissioner does not consider it an appropriate area in which to regulate. A description of proposed activities and estimated expenditures is adequate to enable the Commissioner to make a determination relative to a State educational agency's ability to reach its goals.

§ 166a.13(f) Outreach activities.

Comment. Some commenters questioned the advisability of using program dollars for support services such as transportation and child care. They were particularly concerned over the absence of a ceiling and prescribed monitoring for these expenditures.

Response. To implement section 306(b)(9) of the Act, the proposed rule required that the State agency describe in its plan the efforts it will undertake to *provide* support services such as flexible schedules, transportation, and child care services. Although the same section went on to require the identification of the resources to be used for these support services and further stipulated that a concerted effort be undertaken to provide these services through other programs, agencies, and organizations, many misinterpreted this rule to mean that the State was mandated to use adult education funds for these purposes. The use of adult education funds for support services is only one of the options the State educational agency has available for meeting its responsibilities under section 306(b)(9) of the Act. Therefore, for clarity, the word "provide" has been changed to "assure" in § 166a.13(f)(2) of the final regulations.

The issue of whether to impose a ceiling on these expenditures was discussed at ten public meetings held across the country in December 1978. It was the overwhelming consensus of the members of the public who attended these meetings, as well as of the written responses to this issue, that it would not be practicable to establish a ceiling for these expenditures because (1) the need for these support services and the resources available to meet these needs vary greatly from State to State and (2) any percentage limitation might be interpreted as a set-aside or minimum expenditure requirement. Therefore, this issue was left to the discretion of the States. This regulation has been changed only as noted in the above paragraph.

Comment. Several commenters expressed concern regarding the transportation needs of the elderly and of the physically and mentally handicapped. They suggest that Federal funds be made available for this purpose, as well as for securing buses that have special mechanical aids required by many teachable mentally retarded adults.

Response. No change is made. Since the Act permits a State to use Federal funds for transportation, the provision of transportation services for each of the above groups is permissible. The costs of special services and modifications to equipment for accommodating needs of the handicapped are also permissible under the Act and regulations. It is within the State's discretion to fund these services with Federal or non-Federal resources. Capital expenditures that would not normally be associated with program operations should be approved by the grantor agency prior to purchase.

Comment. A commenter noted that the language of the law regarding convenient locations had been omitted from the regulations.

Response. No change is made. Since the reference to convenient locations is included in the definition of "outreach" in § 166.4(d)(7), the term need not be repeated as an outreach activity.

Comment. Some commenters recommended that State and local outreach efforts to inform and assist adult populations be performed through local media with bilingual presentations, when and where appropriate. Activities to more effectively reach older adults were recommended. Others suggested outreach and support activities to be conducted by direct grants or contracts from a State educational agency.

Response. No change is made. These commenters reinforced the need for a strategy to help inform the least-educated adults. The Commissioner encourages deliverers of adult education services to adopt an effective mode of informing the diverse populations of available services. It is a State educational agency's prerogative to conduct these activities through direct grants or contracts in accordance with provisions of these regulations, 45 CFR Part 74, and its State plan.

§ 166a.13(g) Cooperative arrangements.

Comment. One commenter recommended that a State plan include only a description of the procedures a State educational agency will use to ensure cooperative arrangements with other agencies for delivering adult education and support services. This commenter interpreted the regulation to require that copies of agreements be

submitted with a State plan. Other commenters called for agreements between a State educational agency and subgrantees to explicitly serve a special population group, such as the elderly. More effective use of facilities and support services was offered as a rationale. A general endorsement was made of greater cooperative efforts within States between all subgrantees.

Response. A change is made. The purpose of cooperative arrangements is to enhance the coordinated use of available resources in a State to better meet the needs of adults enrolled in adult education programs. It is recognized that a State enters into cooperative arrangements throughout the year, as needs arise. Therefore, this regulation will be satisfied when a State educational agency describes its procedures for ensuring that cooperative arrangements will be entered into with other agencies. The requirement should not be interpreted to mean that copies of signed agreements must become a part of a State plan. Neither will the regulations be so prescriptive as to cite specific agencies with which a State educational agency must seek cooperation.

The Commissioner gives full support to the call for greater cooperative efforts between a State educational agency and its subgrantees. A State educational agency has the responsibility to establish continuing cooperation and coordination with its subgrantees. However, the Commissioner does not believe a regulatory requirement is in order to effect the latter comment.

Comment. One commenter questioned the absence in the proposed regulations of the listing, contained in the law, of agencies with whom the State educational agency should consult, cooperate, and coordinate.

Response. This listing of agencies is included in the program assurances in § 166a.12(d)(1).

Comment. A commenter requested that the Office of Education publish its cooperative agreements as exemplary models for States.

Response. No change is made. The Office of Education holds interagency agreements with other Federal agencies such as the Administration on Aging, the Department of Labor, and the Department of Defense. However, these written agreements may not be relevant to the cooperative agreements addressed under § 166a.13(g) and may lose their value when considered as a State model. Though useful for Federal functions, these agreements may not be equally germane at State and local levels. Some States might regard models as being overly prescriptive. Federal models could be viewed as limiting the flexibility and innovativeness of agencies, organizations, and institutions within the States. The Commissioner does not consider it feasible to give general dissemination to the interagency agreements.

§ 166a.13(k) Evaluation of activities under sections 306 and 310 of the Act.

Comment. One commenter suggested the regulations require a State to submit a copy of any evaluation under sections 306 and 310 of the Act to the National Advisory Council on Adult Education.

Response. No change is made. Reports of evaluations performed in the States are transmitted to the Commissioner. Since these reports are public information and are available to the public for inspection, the Commissioner does not see the merit in requiring this additional paperwork burden on States. The Commissioner will gladly share any reports with the National Advisory Council on Adult Education.

Comment. One commenter questioned the legal basis for requiring an annual evaluation of activities under sections 306 and 310.

Response. A change is made. The single State application required by section 435(b) of the General Education Provisions Act contains an assurance that the State will evaluate the effectiveness of covered programs in meeting its statutory objectives, at such intervals (not less often than once every three years), and in accordance with such procedures as the Commissioner may prescribe by regulation.

The Commissioner has given further consideration to the proposed requirement for annual evaluations and has determined that this requirement may place an undue burden upon the States. Accordingly, the final regulations will require that evaluations for programs under sections 306 and 310 be performed at least once every three years. Evaluation activities performed during a given program year should be reflected in the narrative section of the annual performance report, to be forwarded to the Commissioner within 90 days of the close of the program year.

§ 166a.14(a) Representation in the development of a State plan.

Comment. A number of commenters gave reasons for the inclusion of additional group representatives in the planning process. The list included: Armed Services (military personnel, their adult dependents, and military educators); State Library Agencies and Libraries; State and Area Agencies on Aging and multi-purpose senior centers; students and teachers involved in the traditional K–12 educational program; minority, handicapped, and women's organizations; teacher organizations; State professional organizations; organizations representing adult educators; and any other agencies and groups that have officially declared in writing to the State their interest in participating in the planning process. It was further suggested that § 166a.14(a)(9) require participation of those community organizations that primarily serve minority or other special groups in need of adult basic education programs. This additional representation was sought to help ensure that the interests of traditionally underrepresented populations receive educational services. It was pointed out that these representatives could also provide a ready source of information concerning educational needs within the State.

Response. A change is made. The Act in section 306(b)(8) is specific relative to fifteen (15) agencies and groups required to be involved in developing and carrying out the State plan. A general category of "other entities in the State concerned with adult education" is added by the legislation and is cited as the sixteenth category in § 166a.14(a) of the regulations. This is the only category in which flexibility by regulation is allowed. The final regulations have added to the list of examples of these "other entites," organizations offering education programs for military personnel and their adult dependents. These examples are intended to be illustrative only and not required by statute. A State, of course, has the option to involve any additional entities it wishes in the planning process.

§ 166a.14(c) Involved in the development of the plan.

Comment. Comments on this requirement cover the entire spectrum from full support to rejection on the basis of exceeding the statute. One commenter called for more specific regulatory language to ensure that special population groups are heard. A commenter suggested that the requirement for participation in "all stages of" formulating the plan exceeds Congressional specifications and is technically impossible. For example, these interests cannot all be involved as voting members of the State board of education nor would it be feasible to include them in the mechanical procedures of writing and editing the plan. Another commenter pointed to the limited funds available at the State level for travel and other meeting expenses. The limiting effect caused by the energy crisis was also cited. Again, pointing to

the excessive time and resources, a commenter took exception to the implied requirement to repeat the participatory process for any alteration or correction of language in the State plan, whether self-inflicted or imposed at the Federal level.

Response. No change is made. The Act and its legislative history reinforce the importance of actively involving the representatives in order to improve the delivery of educational services to those adults who are least educated and most in need of educational assistance.

Therefore, "involved in the development of the plan" is defined in § 166a.14(c) to mean that the representatives of the various agencies and groups are given an opportunity to actively participate in all stages of formulating the plan. In this way, the regulations assure substantive involvement without prescribing the methods or mechanisms through which diverse involvement is achieved. This requirement allows maximum flexibility to a State educational agency while also assuring that token participation will not qualify a State to receive funds. This regulation should not be interpreted to mean that a State educational agency is prohibited from altering its plan or program in the interest of meeting the educational needs of adults. A State educational agency develops procedures and methods for involving the required agencies and groups that best meet the particular needs, problems, and uniqueness of the respective State. Indicators point to positive results on improving and expanding adult education services. The Commissioner believes that any additional time and resources spent on behalf of participatory planning will be more than offset by the benefits derived.

§ 166a.14(d) Agreement by participating representatives.

Comment. Several commenters suggested modifications relating to the disposition of recommendations made by participating representatives. One commenter asked that a clearer explanation be given of how many or what percentage of the participating representatives needed to be in disagreement in order to guide the State as to when to take unilateral action. Comments were made that the State educational agency should only be required to submit documentation for recommendations that were rejected by a majority of representatives participating. This was viewed as a means to ease the paperwork burden.

Response. No change is made. The regulation requirements are intended to ensure that all recommendations receive due consideration by the State educational agency. This is true of a recommendation offered by one or any number of representatives participating. As stated in the preamble of the proposed regulations for this Part, these requirements will also serve as a safeguard against misunderstandings between a State educational agency and participating representatives and will prohibit superficial involvement without substantive impact. A listing of any recommendations that were rejected, with reasons for rejection, will satisfy the requirements. This process is not considered to be one that should result in a voluminous paperwork burden.

§ 166a.15 Delivery system.

Comment. A commenter called attention to the unmet educational needs of young adults, particularly minorities, who are drug abusers. It was recommended that the regulations permit the development of a special delivery system of educational services responsive to their needs.

Response. No change is made. In accordance with the Departmental regulations implementing section 504 of the Rehabilitation Act of 1973, handicapped persons, including drug abusers, are eligible for educational services within the provisions of these adult education regulations. A public or private nonprofit agency, organization, or institution may submit an application to a State educational agency for funds to deliver educational services to adult drug abusers. Any expenditures, however, must be limited to those for educational services; expenses for residential or therapeutic care are not allowable under the adult education program.

§ 166a.15(b) Expansion of the delivery system.

Comment. A number of commenters objected to an expansion of the delivery system through the use of community-based agencies, organizations, and institutions; and, conversely, this expansion was supported by a number of others. The major adversaries cited as their reasons: inadequate Federal, State, and local financial resources; absence of community-based entities in less populous areas of a State; and questionable qualifications of other than public school systems and their teachers to understand and deliver appropriate educational services to the least-educated adults. Established nutrition projects, senior citizens center networks, and regional economic planning authorities were suggested by some commenters as possible means of furthering the expansion efforts.

Response. No change is made. The Congress, in its passage of the 1978 amendments to the Act, placed major emphasis on expansion of the delivery system. Section 306(b)(7) of the Act now requires a State educational agency to describe the means by which the delivery of adult education services will be significantly expanded through the use of agencies, institutions, and organizations other than public school systems. The legislative history clearly indicates that existing cooperative efforts between public school systems and other agencies, organizations, and institutions have not always been adequate to meet the educational needs of those adults who are least educated and most in need of educational assistance. Participation by underserved segments of the population should be increased through the expansion of the delivery system. It is not appropriate for the Commissioner to dictate to State educational agencies which agencies, organizations, and institutions must be used in this expansion effort. Those decisions are left to the discretion of the individual State educational agencies.

§ 166a.15 (b) and (c) Contractual arrangements.

Comment. One commenter expressed the view that financial gain, rather than the provision of education services to needy adults, might be the primary concern of some private for-profit agencies.

Response. No change is made. A State educational agency will make the determination as to the necessity of entering into a contractual arrangement with a private for-profit organization. Such contractual arrangements must be in accordance with State and Federal procurement standards and must constitute a prudent use of funds. The State educational agency is responsible for describing the services and products it wishes to purchase from the private for-profit organization. Furthermore, these regulations will ensure that the needs of the least educated and most in need will be addressed through any contractual arrangements entered into under this provision.

Comment. Several commenters interpreted the provisions of § 166a.15 (b), (c), and (d) as permitting a State educational agency to award grants to, or enter into contracts with, private for-profit organizations. These commenters see the provisions as exceeding the intent of the Act and as direct violations of Federal law.

Response. No change is made. The regulatory provisions of § 166a.15 (b), (c), and (d) do not violate Federal law. The regulations do not authorize a State

to award *grants* to private for-profit organizations. However, Departmental regulations allow State educational agencies and subgrantees to procure services and goods through a contract instrument with private for-profit organizations. Any contract must be in accordance with 45 CFR Part 74, the Education Division General Administrative Regulations, and the HEW Grants Administration Manual.

§ 166a.15(e) Frequency of comments by participating representatives.

Comment. Some commenters expressed the opinion that participating representatives should have an opportunity to comment at least once during the time period covered by a State plan—in this instance, a three-year period. Other commenters did not support the requirement that selected representatives be involved in carrying out the plan. Another commenter questioned a State educational agency's acceptance of comments regarding § 166a.15(e) (1) and (2) from other than selected participating representatives.

Response. No change is made. The planning process is intended to be performed on a continuing basis—from development stages on through the carrying out of the plan. The Act in section 306(b)(8) is specific in this requirement. The regulation is entirely consistent with the legislation.

Regarding the required frequency of comment, the Commissioner believes that the yearly basis is the minimum frequency for which comments could be useful to the State in operating its adult education program. A State plan may be amended at any time the State educational agency feels appropriate. In this manner, new objectives, goals, and directions may be incorporated into the program whenever feasible.

The adult education legislation and its regulations are silent on the solicitation and reaction to suggestions or recommendations from other than participating representatives. However, section 435(b)(7) of the General Education Provisions Act (GEPA) requires that the State provide "reasonable opportunities for the participation by local agencies, representatives of the class of individuals affected by each program and other interested institutions, organizations, and individuals in the planning for and operation of each program * * *." Further, paragraph (B) of that section provides that "the State will publish each proposed plan, in a manner that will ensure circulation throughout the State, at least sixty days prior to the date on which the plan is submitted * * * with an opportunity for public comments on such plan to be accepted for at least thirty days * * *." GEPA and its accompanying regulations are applicable to the adult education programs.

§ 166a.15(f) Consideration of comments by State educational agency.

Comment. Several commenters objected to the requirement to include comments from participatory representatives in the State's subsequent three-year plan. A commenter believed this inclusion to be unnecessary since the State plan content should take into account those comments. This commenter could see no necessity for including comments that, in some cases, would be three years old. Another commenter recommended that the regulations require that comments from participatory representatives on carrying out the three-year plan be submitted with the subsequent three-year plan.

Response. A change is made. Activities of the participating representatives are intended to be on a continuous basis. To assure that these activities receive appropriate consideration, the Commissioner believes that there must be a procedure that requires a State to document its treatment of comments received. This does not eliminate the requirement for participation of representatives in the development of a new three-year plan as regulated in § 166a.14(b)(2). To satisfy the requirement in § 166a.15(f), a summary of comments is adequate rather than actual letters, statements, meeting transcripts, or other primary data.

§ 166a.23 Membership of State advisory councils.

Comment. One commenter believes that State advisory councils should be comprised of members who are representative of all segments of the adult population to be served under the Act. Another commenter suggests membership by military educators on these councils.

Response. A change is made. The Notice of Proposed Rulemaking did not regulate State advisory councils. Section 312 of the Act was referenced for guidance.

Regulations governing State advisory councils are now contained in §§ 166a.21 through 166a.27. Qualifications of membership are extracted from the legislation and included in § 166a.23(b). In an effort to best serve the educational needs of adults, the regulations require that a significant proportion of women, the elderly, minorities, and the educationally disadvantaged be included in the membership.

In response to the second comment, the Commissioner does not believe that the regulations should be so specific but rather that a State should have more flexibility in the selection of State advisory council members.

§ 166a.32 State's limitation on administrative costs.

Comment. Several commenters expressed concern that the 5 percent limitation on funds for administration and development of State plans and other required activities prevents some States from performing adequately those functions required by the statute. Another commenter suggested that a separate appropriation of Federal funds be made to defray administrative costs incurred by the States. Commenters requested clarification of the regulation with regard to any funds a State may contribute toward administrative costs. A further comment called for regulatory authority for the Commissioner to establish guidelines for State administrative costs and to approve these costs based on individual State justifications.

Response. No change is made. Section 315(b) of the Act authorizes an additional appropriation not to exceed 5 percent of the appropriation made under paragraph (a) of that section. The appropriations for each fiscal year have not been made on that two-part basis; rather, for each fiscal year a lump-sum appropriation has been made for the adult education State-administered program. The current policy is to divide the total appropriation into 105 parts, of which not more than 5 parts are available for administrative costs. The Commissioner notifies each State annually of its maximum amount allowable for administrative costs.

The Office of Education may reconsider this policy in the future. At this time, the Commissioner sees no benefits to be derived by requiring individual State justifications for the use of administrative funds.

The regulations provide that the non-Federal share of funds available under the State plan may also be used to pay administrative costs.

§ 166a.41 Eligible applicants for a subgrant.

Comment. A commenter suggested that eligible applicants for subgrants should include local *public* educational agencies and public or private nonprofit agencies, organizations, and institutions. The commenter maintained that this addition would more accurately communicate the actual Congressional

intent for the public system to bear primary responsibility.

Response. No change is made. Both EDGAR and section 303(f) of the Act define a local educational agency as one that is governed by a public board of education. No further language is required to clarify this term.

Comment. To ensure special consideration, a number of commenters suggested that certain agencies, organizations, and institutions be specified in the regulations as eligible deliverers of adult education services. The suggested delivers include women's organizations, fraternal and sororal organizations, churches, labor unions, business and industry, libraries, State agencies for substance abuse and corrections, and agencies to serve the elderly.

Response. No change is made. Section 304(a) of the Act specifies that local educational agencies and public or private nonprofit agencies, organizations, and institutions are eligible to apply to a State educational agency for financial assistance to conduct an adult education program. This language provides sufficient guidance to the State on the question of eligible applicants.

Comment. Because facilities and cultural environments may provide security to the learner, one commenter favors the use of community-based organizations for adult education programs for minority populations. Another commenter suggested that community-based organizations experienced in conducting adult basic education programs apply directly to the Office of Education for funding rather than applying to the State educational agency.

Response. No change is made. Section 304(a) of the Act establishes the State-administered program for adult education. Funds are allocated to the States on a formula basis and the States fund local programs based on need and resources available. The Commissioner does not have the discretion under the authority to fund directly any applications from community-based organizations.

To the extent that community-based organizations qualify as nonprofit agencies, organizations, and institutions, they are eligible applicants for subgrants from State educational agencies. The legislative history clearly indicates that non-school-based programs are sought in an attempt to attract greater participation from many segments of the adult population. Participation by underserved segments, including minorities, should be increased through the legislative requirement for an expansion of the delivery system. Through the expanded delivery system, efforts will be strengthened to meet the educational needs of those adults who are least educated and most in need of educational assistance.

Comment. Several commenters expressed concern about the fairness of various aspects of a competitive application between local educational agencies and public and private nonprofit agencies, organizations, and institutions. One commenter wanted to require a minimum of 120 days lead time from the date a State announces the availability of funds to the closing date. Another recommended that a State be required to notify any interested party, so requesting in writing, of the availability of funds on the same basis as they regularly notify local educational agencies.

Response. No change is made. The Commissioner desires a competitive application process that results in funding the best possible combination of educational deliverers for reaching the adult populations most in need in the most efficient and economical manner. Activities, such as those suggested by the commenter, that may result in a State's improving the process of notifying all eligible applicants of the availability of funds is encouraged. The Commissioner feels, however, that a State should have the flexibility to design and implement a public notice system that best meets its needs. Therefore, it would be improper to regulate on this matter beyond what is already required in § 166a.41(d).

Comment. A commenter suggested that no percentage limitation on the amount of funds available to nonprofit agencies, organizations, and institutions be imposed by a State.

Response. No change is made. Neither the legislation nor the regulations permit a percentage limitation of funds for either local educational agencies or for public and private nonprofit agencies, organizations, and institutions.

Comment. A commenter questioned the proposed requirement that "advice and guidance" be sought from the applicable local educational agency. Some commenters expressed concern that the gap is so great between local educational agencies and nonprofit agencies in the understanding of the needs of the least educated, and in the confidence level in each other's performance capabilities, that consultation will not work. Other commenters feel that consultation will work only if the regulations prescribe the mode and frequency of the consultation that must take place. One commenter specifically suggested that consultation should not take place until after the grant awards are made by a State. Still others were concerned that a local educational agency could jeopardize a nonprofit agency's application through non-action on the request for consultation.

Response. Section 304 of the legislation clearly requires consultation *prior to funding* a nonprofit agency's proposal by a State. The Commissioner wishes to provide a State the flexibility to engage in the type of meaningful consultation determined most effective. It would not be appropriate for these regulations to go beyond the scope of the legislation by prescribing a specific mode or frequency of consultation. The purpose of consultation is to reduce duplication of effort and provide for the best possible delivery of services to the adult populations most in need. Consultation will enable different points of view and understanding, such as those expressed by these commenters, to be considered in an organized way. The initiative for seeking consultation is the responsibility of the public or private nonprofit agency. The local educational agency does not have the authority to certify, approve, or veto a proposal from a nonprofit agency. Nor can the local educational agency jeopardize the nonprofit agency's application through inaction on the request for consultation. If a local educational agency delays in commenting on a nonprofit agency's proposal, a State may still consider the proposal for funding if there is written evidence that consultation was requested in a timely manner. The Commissioner, upon further consideration, has amended § 166a.41(b) to delete the reference to "guidance." No other change is made in the regulations.

Comment. One commenter suggested that the regulations provide for a more equitable distribution of adult education funds to programs serving women and minorities.

Response. No change is made. Eligible applicants under this legislation (local educational agencies and public or private nonprofit agencies, organizations and institutions) expend funds awarded by the State on the basis of local applications. These applications address the needs of the least educated and most in need. Accordingly, the primary factor for eligibility in adult education programs is not the segment of the population to which an individual belongs, but the individual's level of mastery of basic educational skills necessary to function effectively in society. Women and minorities are eligible for services in adult education

programs to the same extent as any other population group.

§ 166a.51 State review of applications.

Comment. Several commenters expressed concern about the capability of private nonprofit agencies to deliver quality educational services, provide adequate fiscal accounting, avoid duplicate purchasing of hardware and software that already exist in the local educational agency, and demonstrate that the least educated and most in need will be served effectively. Others recommended that the State educational agency give first consideration to funding those nonprofit agencies that have years of proven experience with a good track record in serving special populations. Others desired preferential consideration for postsecondary institutions over private enterprises. Some commenters felt that non-educational subgrantees will be inadequately monitored by State and Federal agencies.

Response. No change is made. All of these comments focus on the State educational agency's responsibility to determine which applicants will comprise the statewide delivery system for meeting the needs of underserved populations. The State educational agency must take into consideration each applicant's capability to avoid duplication of costs and overlapping of programs, as well as to provide quality services, fiscal accountability, and access to the least educated and most in need populations. There is no requirement in the Act or in the regulations that gives preferential consideration to private organizations with experience or to postsecondary institutions as part of the delivery system. Neither does the Act guarantee any specific category of eligible recipients for funding. The State educational agency is provided the flexibility to consider consortia made up of private and public nonprofit agencies and the local educational agency.

Furthermore, all applications to the State are judged on the basis of the criteria set forth in the plan. The process of State educational agency review and funding on the basis of the criteria does not preclude an applicant from appealing the decision to the State.

Comment. One commenter suggested that the number of persons needing educational assistance is the most accurate criterion to apply in justifying funds for a program. This commenter expressed the view that having to respond to extensive criteria could require lengthy applications that might be beyond the available resources of some local agencies.

Response. No change is made. The Commissioner believes it is inappropriate to regulate the content of local applications; and, therefore, a State may use the data and criteria it determines best for making funding decisions. However, the factors listed in § 166a.51(b) are what the Commissioner considers essential for developing criteria for the review of local applications that would implement the purpose of the legislation. The Commissioner believes the potential for improved programs outweighs any disadvantages that may occur from increased application requirements.

§ 166a.61 Matching requirements.

Comment. One commenter views the provision for computation of the non-Federal share of expenditures on a statewide basis as reassuring to less affluent deliverers of adult education services. The provision is also considered a factor in encouraging additional contributions from State resources. Another commenter requests that the regulations specifically state that in-kind contributions qualify toward meeting the matching requirement.

Response. No change is made. The Commissioner agrees with the content of the comments. The Department of Health, Education, and Welfare General Administration Regulations in 45 CFR Part 74 are applicable to the adult education programs. Under § 74.52(b) of that Part, the value of third-party in-kind contributions may be used in satisfying the matching requirement.

§§ 166a.62–166a.65 Maintenance of effort.

Comment. One commenter stated that a particular State was currently contributing as much as 60 percent of the total adult education expenditures in the State, substantially more than the 10 percent matching requirement. This commenter expressed concern that future legislation, such as Proposition 13, might prohibit a State appropriation of adult education funds equal to those of previous years. It was suggested that a new subsection (c) be added to § 166a.62 to read: "Notwithstanding § 166a.62 (a) and (b) above, a State shall be eligible for Federal adult education funds provided the State expends for adult education from non-Federal sources a sum equal to 10 percent of the cost of carrying out the State adult education programs in the preceding and in the second preceding fiscal years."

Response. Although the suggested language would conform to the matching requirement in section 307(a) of the Act, it would clearly violate the maintenance of effort requirement in section 307(b). Once a State generates a specific amount for adult education, it cannot decrease that amount without receiving a waiver from the Commissioner. The Notice of Proposed Rulemaking cited as an example of exceptional and unforeseen circumstances "a sudden and substantial diversion of available revenue to other purposes outside the control of the State or local educational agency." For clarification purposes, this provision in § 166a.64(b)(2) has been changed to read "* * * outside the control of the local educational agency or the State." A reduction in State-appropriated adult education funds, such as in a Proposition 13 initiative, would not qualify for a waiver since it does not appear to be an exceptional and unforeseen circumstance.

Comment. One commenter stated that the language of this section is punitive and outside Congressional intent. This commenter also opposed the reduction of the Federal grant in the succeeding year if the State was able to meet its matching requirements for that year.

Response. No change is made. The language of § 166a.65 is based on statutory authority. Section 431A(b) of the General Education Provisions Act specifically directs the Commissioner to reduce the amount of the Federal payment to the State for the *current* fiscal year in the exact proportion to which the amount expended (either on an average per pupil or aggregate basis) was less than the amount required by section 307(b) of the Adult Education Act. Since failure to maintain effort can only be determined on an after-the-fact basis, it would not be possible to reduce the Federal grant in the year in which the failure to maintain effort occurred. Although this commenter referred to waiver of the "matching" requirement, we have interpreted this to mean waiver of the maintenance of effort requirement since the law does not contain any provision for waiver of the matching requirement.

Comment. Several respondents recommended that the regulation governing maintenance of effort be made more lenient by—

(1) Removing the "one year only" provision of § 166a.53;

(2) Not requiring a pro rata reduction in the current year's allotment for failure to maintain effort; and/or

(3) Allowing some leeway for reduction of State and local effort. For example, an allowable percentage reduction could be established that could be applied prior to requiring any pro rata adjustment of the Federal payment for the current year.

Response. No change is made. Since both items (1) and (2) above are contained in the waiver authority of section 431A(b) of GEPA, the regulations must be consistent with these requirements. Although there is precedent in other program authorities for a percentage reduction in State and local maintenance of effort expenditures, the language of the existing legislation governing waivers for the adult education program does not permit such a reduction.

§ 166a.66(c) Funds for section 310 projects.

Comment. Commenters made suggestions ranging from repealing the authority for special experimental demonstration projects and teacher training projects to allowing flexibility by a State educational agency in determining amounts in excess of the 10 percent of a State's allotment as required by the legislation. Other commenters supported a flexible percentage provided that it is justified.

Response. No change is made. Section 310 of the Act requires each State to expend at least 10 percent of its allotment for special experimental demonstration projects and teacher training projects. This is the same minimum percentage contained in the former section 309 of the Act. The Commissioner believes a State is in the best position to determine its needs for section 310 projects and that no programmatic benefit would accrue as a result of establishing a justification requirement or an upper limit. Inflationary pressures appear to have forced State educational agencies to allocate as much as possible of their allotments for program operations.

§ 166a.72 Criteria and priorities for section 310 projects.

Comment. A commenter suggested that, in establishing statewide criteria and priorities for section 310 projects, a State educational agency should be required to give consideration to the degree to which an applicant can demonstrate that it has experience, qualifications, and a successful record in providing services.

Response. No change is made. The Commissioner believes that a State educational agency should be given flexibility in establishing its own statewide criteria and priorities. However, a State must follow the requirements in Subparts D and E of 100b of EDGAR in administering these funds. Those regulations address the general administration principles that consider the concerns expressed by the commenter.

Comment. Several commenters cited the need to upgrade the quality of ESL teachers. One commenter suggested that requiring that adult education teachers be certified would help to improve the quality of ESL teachers.

Response. No change is made. Teacher training is a State responsibility and is an allowable expenditure under the regulations as written.

§166b.111 Compliance with section 426 of GEPA.

Comment. A commenter is concerned that the regulations governing grants under section 309 do not comply with section 426 of the General Education Provisions Act, as amended. More specifically, the commenter suggests that the selection criteria in § 166b.131 be amended to include additional points to those applicants who plan to work with publishers on the development of curricula and instructional materials.

Response. Section 426 of GEPA places responsibility on the Commissioner to encourage applicants for grants that propose to develop curricula or instructional materials to consult with publishers, personnel of State and local educational agencies, teachers, administrators, community representatives, and other individuals experienced in dissemination.

The Commissioner does not view this provision as one for which points could be earned, but rather an area in which the Commissioner will encourage adherence by the applicant. The requirement for compliance with section 426 of GEPA is now contained in § 166b.111 of these regulations.

§166c.202 Applicant eligibility.

Comment. Several commenters questioned the differentiation between agencies eligible to apply for grants under the adult immigrant authority of section 318 and the adult Indochina refugee authority of section 317. The majority of these commenters stated that funding for the Indochina refugee program should not be limited to State and local educational agencies, but instead that this funding should also be available for private nonprofit agencies, organizations, and institutions that have historically provided substantial educational services for Indochina refugees.

Response. No change is made. The legislation is specific regarding who may apply for trants and contracts under these authorities. Section 318 of the Act mandates that not less than 50 percent of the funds appropriated for the adult immigrant program be used to enter into contracts with private nonprofit agencies, organizations, and institutions. However, the Indochina refugee authority in section 317 limits grants to State and local educational agencies, with no provision for the Commissioner to enter into direct contracts for the operation of programs. The evaluation criteria of § 166c.232(i), in recognition of the extreme importance of participation by organizations that are familiar and sensitive to the needs of the refugees, allow up to 20 points for applications that clearly describe cooperative arrangements with other agencies, which would include agencies that have in the past demonstrated experience and/or expertise in working with adult immigrants.

Comment. One commenter expressed the view that both of these programs should be funded directly to the States, based upon adult immigrant and Indochina refugee populations, and that the States, in turn, would fund local programs.

Response. No change is made. Since both sections 318 and 317 specifically describe discretionary programs by the Commissioner, it would be inappropriate to distribute funds to States on a formula basis.

Comment. One commenter misinterpreted the 50 percent minimum for contracts to immigrant programs to refer to State grant funds. This commenter expressed the view that local educational agencies have made an equally valuable contribution to providing educational services for immigrants. Another commenter stated that where schools can do the job effectively they should be funded even if this should result in greater than 50 percent of the total section 318 awards.

Response. No change is made. Under the provisions of section 318(e) of the Act, the Commissioner must use not less than 50 percent of the funds appropriated for the Adult Education Program for Adult Immigrants to enter into contracts with private nonprofit agencies, organizations, and institutions. This requirement does not apply to State grant funds made available under section 305(a). The distribution of State grant funds, as well as the criteria for evaluating applications for these funds, is left to the discretion of the States.

Comment. One commenter suggested that minority and women's organizations be specifically listed as eligible applicants for adult immigrant and Indochina refugee funds.

Response. No change is made. Minority and women's organizations could qualify under the "private nonprofit agencies, organizations, or intitutions" provision of § 166c.202(a)(4), governing eligible applicants under the immigrant authority. As stipulated in

section 317 of the Act, only State and local educational agencies are eligible to apply for grant funds to operate adult education programs for adult Indochina refugees.

§166c.202 Distribution of grants.

Comment. One commenter expressed concern that with the quota lifted, more and more refugees will tend to migrate to already overpopulated areas, such as California. This commenter stated that State and local tax dollars have already been stretched to the limit to provide services for these special populations and that a greater percentage of Federal funds should go to those areas.

Response. No change is made. Since the Act specifically refers to a competitive application process for the distribution of funds under the adult immigrant and Indochina refugee programs, it is not possible to award grants on a quota or fomula basis. Need for the project is, however, taken into consideration as a proposal evaluation criterion in § 166c.232(g) of these regulations.

Comment. Several commenters referred to the need for English as a second language and basic skills programs for adult dependents of military personnel. They pointed out that the Department of Defense has a fully funded education program for active duty and military personnel, but no provision for their adult dependents.

Response. No change is made. Adult dependents of military personnel would be eligible to participate in projects funded under the State grant program. To the extent that these dependents also qualify as immigrants or Indochina refugees, they would also be eligible to participate in projects funded under section 317 or 318 of the Act.

§166c.212 Program purposes.

Comment. One commenter asked about the types of services to be provided adult immigrants and Indochina refugees.

Response. The proposed rule did not list the types of activities that are eligible for funding under these two programs, but instead cited sections 317(a) and 318(a) of the Act. These activities are now reflected, with examples, in § 166c.212 of the final regulations.

Comment. One commenter stated that educational agencies cannot and should not provide social support and that, conversely, other agencies that do provide such support should use educational agencies to teach their clients.

Response. Support services authorized under these regulations are limited in § 166c.212(c) to *educational* support services such as tutoring (in the case of geographically isolated immigrants or Indochina refugees) and guidance and counseling with regard to educational, career, and employment opportunities such as job placement and job follow-up services. As indicated above, these examples are included in the final regulations.

Comment. One commenter recommended that a portion of the funds authorized under section 318 and 317 be used for a national clearinghouse for these programs. This clearinghouse would establish a mechanism whereby technical assistance in both materials and training would be available, on a national basis, concerning languages and cultures of all refugee and immigrant groups.

Response. No change is made. The statute does not include as an eligible activity the establishment of a national clearinghouse for the adult immigrant and Indochina refugee programs. This could, however, be included as part of the dissemination activities of section 309 of the Act.

§§ 166c.212 and 166c.232(f) English as a second language/bilingual instruction.

Comment. Commenters expressed varying views on the language in which instruction and counseling should be offered in programs for adult immigrants and Indochina refugees. Some commenters supported English as a second language, while others gave strong justification for bilingual instruction.

Response. A change is made. The authorizing legislation provides programs of instruction for the purpose of enabling immigrants and Indochina refugees to become productive members of American society and emphasizes the development of literacy and language skills in the English language. Bilingual instruction is not explicitly required in the legislation and is therefore not required in the regulations. The Commissioner agrees, however, that bilingual staff capability may be needed to assist adult immigrants and Indochina refugees in learning English or in acquiring skills that will make them more employable. For this reason a new criterion, "Addressing language and cross-cultural needs," has been added in § 166c.232(f) (1) and (2) to give points for the application's emphasis on the development of oral and aural English language proficiency.

§ 166c.213(b)(1) Eligible participants under the program for adult Indochina refugees.

Comment. One commenter pointed out that the proposed regulations specifically limited eligibility in programs funded under section 317 to Indochina refugees who possess an INS Form I–94. This requirement, he stated, eliminates those adult Indochina refugees who have become permanent resident aliens and, therefore, possess either an INS Form I–151 or I–551.

Response. A change is made. Section 166c.213(b)(1) of the final regulations has been amended to include as eligible participants Indochina adults who: have parole, voluntary departure, or conditional entry status, as indicated by INS Form I–94; were admitted to the United States with permanent resident status on or after April 8, 1975, as indicated by INS Form I–151 or I–551; or have permanent resident status as a result of adjustment status under Pub. L. 95–145, as indicated by INS Form I–151 or I–551.

§ 166c.222 State review of applications.

Comment. Two commenters expressed the view that the procedures for the State review of applications for the adult immigrant and Indochina refugee programs are to cumbersome and that these procedures should be streamlined to encourage more private organizations to operate these programs.

Response. A change is made. The requirements for the State review of applications for these programs are contained in the authorizing legislation.

§ 166c.232(b) and 166c.241(h) Instructional personnel.

Comment. Several commenters referred to the need for pre-service and in-service training for instructional personnel. Many ESL teachers, they stated, are volunteers or retired teachers who want to help but who may not have the training and experience necessary to serve these special populations most effectively.

Response. A change is made. Under the proposed rule, expenditures for pre-service and in-service training were limited to one percent of the grant award, unless otherwise justified in the application. The final regulations, in § 166c.241(h), increase this limitation to 5 percent of the grant award.

Comment. In a closely related issue, one commenter recommended that teacher certification be required for all instructional personnel in both the adult immigrant and the adult Indochina refugee programs.

Response. No change is made. Since teacher certification requirements vary from State to State, it would be inappropriate for the Commissioner to regulate on the issue. However, the quality of key staff members, both administrative and instruotional, will be taken into consideration under the application evaluation criterion contained in § 166c.232(b) of these regulations.

§§ 166c.241(d) and 166a.13(f)(2) Day care.

Comment. A few commenters pointed out that the proposed regulations referred both to "child care" and "day care." One commenter recommended that the provision for day care be expanded to include care for *any* persons residing with participants who are in need of supervisory care. Another commenter asked about the hours of operation of day care centers.

Response. A change is made. In order to conform with the Federal Interagency Day Care Regulations in 45 CFR Part 71, all references to child care in the proposed regulations have been changed to read "day care." Under the authority of 45 CFR 71.1, day care services provide for the direct care and protection of *infants, preschool,* and *school age children* outside of their own homes during a *portion of a 24-hour day.*

General Comments

Comment. A commenter suggested that the citation of legal authority also notes the applicable section or subsection of the Act to which it refers. This citation appears in parentheses on the line following each substantive provision in the regulations.

Response. Although the inclusion of reference sections to the legislation is not a requirement in drafting Federal regulations, the Commissioner agrees with the commenter. Accordingly, the addition has been made in citations to legal authority.

Comment. A commenter suggested postponing the implementation of changes in the administration of the program until fiscal year 1981 in order that the operation of established, successful projects not be disrupted.

Response. No change is made. The legislation became effective on November 1, 1978. Congress requires that laws and regulations be put into force within prescribed periods of time after enactment and final approval. It is not possible to delay the implementation until fiscal year 1981 as suggested by the commenter. However, the Commissioner has periodically since enactment provided States with advice and guidance on implementing the new procedures in the legislation. Therefore, there should be no disruption of established, successful projects that serve the needs of the least educated and most in need.

Section 311(a) Special Projects for the Elderly.

Comment. A commenter suggested that limiting special projects to the elderly who are culturally segregated is a disservice to the elderly and needlessly limits the potential of these programs. Elderly persons are very tolerant of cultural interchange, especially among their peers. Many elderly persons do not have the skills to deal successfully with the practical problems of daily living caused by rapid changes and increased complexity of life. Therefore, it would be more practical to allow these special projects to teach the elderly daily living skills and how to deal with governmental agencies, in addition to teaching English to those whose ability to read and write the English language is limited.

Response. No change is made. Funds have not been made available by Congress to date for Special Projects for the Elderly. However, the elderly are eligible for the types of programs suggested by the commenter under section 304 of the legislation.

Comment. With the increased emphasis in our society on providing educational opportunities for all individuals, one commenter suggested that a college preparatory remedial program is an area that deserves consideration for future support.

Response. The Act does seek to enable adults who so desire to continue their education to at least the level of completion of secondary school. Support for a more specific college preparatory remedial program would require amended or new legislation. Legislative proposals are outside the scope of the regulation process. Therefore, it is inappropriate to respond in these regulations.

Comment. Commenters voiced concern that the adult education reporting system does not adequately reflect the accomplishments of the adult education program. A commenter spoke specifically on behalf of accomplishments by local educational agencies.

Response. No change is made. The Commissioner agrees that the reporting system for adult education needs evaluation and revision. The statistical report and the narrative performance report are of limited value in portraying a true picture of the program. The House of Representatives during its deliberations on the 1978 amendments to the Act voiced a similar desire for improvement of the quality of data on adult education. While the Office of Education is responding with a concerted effort to improve the reporting system, this is not an appropriate area for inclusion in the regulations.

Comment. One reader found the Supplementary Information section of the preamble to the NPRM to be very useful and expressed the desire to see the section published as part of the final regulations.

Response. The supplementary information published on June 28, 1979, in the **Federal Register**, Vol. 44, No. 126, in the proposed rules will not be republished with the final regulations. However, most of the issues addressed in the supplementary information section of the proposed rules are reflected in the preamble and in the responses to comments from the public.

Comment. A commenter asked what procedures had been established for filing complaints regarding noncompliance to these regulations.

Response. No change is made. If a subgrantee, agency, organization, institution, or individual believes that there is a basis for noncompliance pertaining to programmatic issues, that entity should file a written, signed complaint with the State in accordance with the complaint procedures outlined in 45 CFR 100b.780 through 100b.782 of EDGAR. If a complaint deals with an issue or situation related to civil rights, the communication should be sent to the appropriate HEW Regional Office to the attention of the Office for Civil Rights.

Appendix A—National priorities.

Comment. Regarding the development of national priorities, one commenter recommended that national priorities be suggested rather than mandated, and that agencies such as State educational agencies, local educational agencies, and the National Advisory Council on Adult Education be involved in the development of these priorities. Another commenter thought State priorities should have first consideration over national priorities in meeting the special project and staff development needs in the States.

Response. All the points raised by these comments are already contained in the regulations. Section 166a.72(a)(1) of the regulations requires that a State educational agency "establish its own statewide criteria and priorities for administering special projects and teacher training projects." Appendix A (Appendix B of the NPRM) begins: "For the *guidance* of State educational agencies the Commissioner *suggests* that the following national priorities merit

special consideration * * *" (emphasis added). Section 166a.72(b)(2), requiring each State to indicate how its priorities relate to published national priorities, assures that each State has taken the national priorities into consideration. In the event a State indicates its priorities are unique and do not relate to published national priorities, the State will have satisfied the requirements of § 166a.72(b)(2).

Comment. Several commenters addressed the first priority under Appendix A, directed to expanding outreach. These commenters supported the priority as generally stated, while several sought modifications to the expanded text. One commenter urged adding members of ethnic and racial minorities to those included in the list of underserved, while another suggested adding teenage mothers. Another commenter sought special attention for teacher training for those working with migrant populations. Still another commenter urged adding State and area agencies on aging and senior centers to those organizations mentioned in (1)(a) of Appendix A.

Response. The words "migrants" and "minorities" have been added to the list of suggested underserved populations. The phrase "women with special needs" has been substituted for the list of more specific female populations to suggest that all women who are least educated and most in need be addressed.

The Commissioner believes that specifying the types of agencies by broad categories, such as "community organizations and other non-governmental agencies" is preferable to listing organizations and agencies concentrating on only one of the underserved populations, such as aging. This is consistent with the legislative requirement to increase outreach by expanding services through a wide range of organizations, agencies, and institutions that can best provide services to those least educated and most in need. Therefore, no change is made in paragraph (1)(a) of Appendix A.

Comment. One comment was received supporting national priority (2), *Identifying and preparing for new and emerging roles,* while another commenter found the priority too general and lacking in clarity.

Response. The Commissioner has found that general statements of emerging and identified need best accommodate the multiplicity of conditions existing among the 57 States and Territories. Therefore, no change is made in the text of paragraphs (a) through (d) of priority (2). However, a new pararaph (e), relating to non-traditional adult education techniques, has been added to priority (2).

Comment. A wide range of comments was received on priority (3) of Appendix A. One commenter, who was highly supportive of the priority, suggested adding support services to paragraph (3)(b). Another commenter called for eliminating paragraphs (3)(c) and (3)(d) on the basis that further curriculum development is not needed and that special emphasis should be given to priority (4). Another commenter found paragraph (3)(d) unclear and called for adding the development of non-traditional techniques for assessment, and training of staff in these techniques. A countervailing comment pointed to effective assessment instruments already developed in support of the Adult Performance Level project and called for encouraging use of these instruments. Finally, another commenter recommended that the Adult Performance Level curricula be suggested as a means to teach the skills necessary to function in society. This commenter also called for retraining teachers in using the curricula.

Response. Priority (3) has been extensively revised to accommodate these suggestions. Paragraphs (3)(c) and (3)(d) have been revised to avoid duplication, while re-emphasizing the need for curricula effectively related to the least educated and most in need. A new paragraph (e) has been added to priority (2) to further emphasize staff and teacher training in non-traditional adult education techniques. In addition, priority (4) has been amended to emphasize the importance of assessing and disseminating existing developments in Adult Performance Level and competency-based adult education.

The final comment—that of suggesting Adult Performance Level curricula as the desirable ones to teach the skills necessary to function in society—is not adopted. Published national priorities are not the appropriate mechanism for suggesting curricula. The National Diffusion Network is a system developed for disseminating validated instructional programs. Two Adult Performance Level-Based curricula projects have recently been validated and are being disseminated under this system. Other projects are encouraged to utilize this national dissemination mechanism.

Comment. It was suggested that "Women with Special Needs" be added as a fifth national priority.

Response. A change is made. Because women have historically been the majority population served by the Adult Education Program, there appears to be no need to list them as a separate priority deserving special attention beyond the priority of least educated and most in need. However, in response to this comment, "Women with Special Needs" has been incorporated in priority (1) to assure that the needs of all women who are least educated and most in need will be considered.

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federal register

Thursday
April 3, 1980

Part XVII

Department of Health, Education, and Welfare

Office of Education

Cooperative Education Programs

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

45 CFR Part 182

Cooperative Education Programs

AGENCY: Office of Education, HEW.

ACTION: Final regulations.

SUMMARY: The Commissioner of Education amends the regulations for the Cooperative Education Program. The amendment will permit multi-year funding of Demonstration/Exploration Awards from a single year's appropriation.

EFFECTIVE DATE: These regulations are expected to take effect 45 days after they are transmitted to Congress. Regulations are usually transmitted to Congress several days before they are published in the **Federal Register.** The effective date is changed by statute if Congress disapproves the regulations or takes certain adjournments. If you want to know the effective date of these regulations, write or call the Office of Education contact person.

FOR FURTHER INFORMATION CONTACT: Mr. Morris Brown, Chief, Cooperative Education Branch, Division of Training and Facilities, Bureau of Higher and Continuing Education, Room 3053, Regional Office Building 3, 7th and D Streets, S.W., Washington, D.C. 20202. Telephone: (202) 245–2146 or 245–2484.

SUPPLEMENTARY INFORMATION: The Commissioner finds that public comment on this amendment is unnecessary within the meaning of 5 U.S.C. 553(b) because it deals only with the allocation of funds to the different parts of the program and does not affect any substantive aspect of the regulations which were published after a public comment period, in May, 1978 (43 FR 18674). This amendment merely permits the funding of multi-year awards from a single year's appropriation.

Approved: February 5, 1980.

(Catalog of Federal Domestic Assistance No. 13.510; Cooperative Education Program: Demonstration/Exploration)

William L. Smith,

Commissioner of Education.

The Commissioner amends 45 CFR 182.34 by revising paragraph (a); redesignating paragraphs (b) and (c) as paragraphs (d) and (e); and adding new paragraphs (b) and (c) to read as follows:

§ 182.34 Duration of awards.

(a) Awards made under this subpart may be for single-year or multi-year periods.

(b) Awards for multi-year projects will generally be made in accordance with the regulations as set out in 45 CFR 100a.250 and 100a.251 (EDGAR).

(c) The Commissioner may award a grant out of one year's appropriation for multi-year demonstration projects.

(20 U.S.C. 1133b)

[FR Doc. 80-9536 Filed 4-2-80; 8:45 am]

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federal register

Thursday
April 3, 1980

Part XVIII

Department of Health, Education, and Welfare

Office of Education

Selection Criteria for Fiscal Year 1981 Grants and Contracts

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

45 CFR Parts 105, 121d, 121e, 121f, 121h, 121k, 131, 132, 133, 136, 146, 146a, 148, 154, 155, 157, 158, 159, 164, 169, 172, 173, 179, 182, 182a, 191, 194, 197, and 198

Selection Criteria for Fiscal Year 1981 Grants and Contracts

AGENCY: Education Division, HEW.

ACTION: Proposed rules.

SUMMARY: The Education Division proposes to amend the selection criteria for programs administered under the parts listed in the heading to this document.

The Education Division General Administrative Regulations (EDGAR) are published in today's **Federal Register** as final regulations. EDGAR establishes general selection criteria that are used with program selection criteria to select applications for funding. These proposed revisions are needed to repeat the EDGAR criteria in appropriate program regulations.

The Education Division also proposes to delete selection criteria in these programs that duplicate the EDGAR criteria. The effect of these proposed changes is to provide a uniform set of selection criteria on five subjects: Plan of operation, quality of key personnel, budget and cost effectiveness, evaluation plan, and adequacy of resources.

DATE: Comments must be received on or before June 2, 1980.

ADDRESS: Address comments to the Division of Regulations Management, U.S. Office of Education, Room 2129, FOB–6, 400 Maryland Avenue, SW., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Connors (202) 245–7091.

SUPPLEMENTARY INFORMATION:

Background

The Education Division published the Education Division General Administrative Regulations (EDGAR) as proposed rules on May 4, 1979 (44 FR 26298). 45 CFR Part 100a of EDGAR describes the procedures an applicant to a direct grant program must follow to apply for a grant. EDGAR also describes the procedures the Education Division uses to make those grants. 45 CFR Part 100a of EDGAR covers may other issues relating to the administration of Education Division direct grant programs. For a full understanding of the scope of EDGAR, please review the EDGAR final regulations published in today's **Federal Register** in the rules and regulations section.

Discretionary Grant Programs and Selection Criteria

The majority of the direct grant programs administered by the Education Division are discretionary grant programs. 45 CFR 100a.200 of EDGAR describes what a discretionary grant program is and how selection criteria are used in this kind of program.

Section 100a.200 How applications for new grants are selected for funding.

(a) *Direct grant programs.* The Education Division administers two kinds of direct grant programs. A direct grant program is either a discretionary grant or a formula grant program.

(b) *Discretionary grant programs.* (1) A discretionary grant program is one that permits the appropriate official of the Education Division to use discretionary judgment in selecting applications for funding. (Cross-reference—See 45 CFR 100a.219 Exceptions to the procedures under § 100a.217).

(2) The appropriate offical of the Education Division uses selection criteria to evaluate the applications submitted for new grants under a discretionary grant program.

(3) Sections 100a.202 through 100a.206 contain the EDGAR selection criteria. The EDGAR criteria used by a program are repeated in the program regulations. If a program does not have selection criteria, the appropriate official uses the EDGAR criteria, with each criterion weighted equally, to evaluate applications.

(c) *Formula grant programs.*

* * * * *

The Changes to the Criteria

The Education Division proposes to revise program selection criteria in appropriate programs by repeating the EDGAR selection criteria. The Education Division also proposes to delete criteria in these programs that duplicate EDGAR criteria. The programs affected by these changes are existing programs of the Education Division other than those amended by the Education Amendments of 1978 (Pub. L. 95–561). The regulations for programs amended by Pub. L. 95–561 are being conformed to EDGAR through separate publications in the **Federal Register.**

The Education Division plans to use the criteria proposed in this document to select applications for grants funded in fiscal year 1981.

Comments

Please send your comments on these revisions to the address specified at the beginning of this document. In making your comments, please use the following guidelines:

1. Identify each section in these proposed regulations on which you want to comment.

2. For each of these sections, explain what you like or dislike about the section. Is the policy expressed in the section a good policy or a poor policy? Why do you think so?

3. If you believe that a section needs to be changed, explain what you want done and explain why your change would improve the proposed regulations.

All comments will be available for public inspection at the address at the beginning of this preamble between the hours of 8:00 a.m. to 4:30 p.m., except Saturdays, Sundays, and Federal holidays.

Dated: February 25, 1980.

Peter D. Relic,

Acting Assistant Secretary for Education.

Dated: February 6, 1980.

William L. Smith,

Commissioner of Education.

Dated: February 22, 1980.

Michael Timpane,

Director of the National Institute of Education.

Dated: February 25, 1980.

Lee Kimchee,

Director of the Institute of Museum Services.

Approved: March 20, 1980.

Patricia Roberts Harris,

Secretary of Health, Education, and Welfare.

The agencies of the Education Division propose to amend 45 CFR as follows:

PART 105—COMMISSIONER'S DISCRETIONARY PROGRAMS OF VOCATIONAL EDUCATION

1. Section 105.110 is revised to read as follows:

§ 105.110 Selection criteria.

The Commissioner uses the criteria in this section to evaluate applications for new awards. The maximum score for all of the criteria is 100 points.

(a) *Plan of operation.* (Maximum 34 points)

(1) The Commissioner reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Commissioner looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (Maximum 8 points)

(1) The Commissioner reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Commissioner looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Commissioner considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (Maximum 7 points)

(1) The Commissioner reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Commissioner looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (Maximum 7 points)

(1) The Commissioner reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—45 CFR 100a.590 Evaluation by the grantee.

(2) The Commissioner looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (Maximum 3 points)

(1) The Commissioner reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Commissioner looks for information that shows—

(i) The facilities that the applicant plans to use are adequate, and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *National need.* (Maximum 15 points). The need section clearly—

(1) Describes the national need in vocational education for the proposed project;

(2) Provides specific evidence of the need;

(3) Indicates specificially who or what will be helped; and

(4) Describes the problem rather than symptoms of the problem.

(g) *Literature review.* (Maximum 5 points). The literature review is sufficiently comprehensive to—

(1) Establish the basis for the problem;

(2) Describe the problem in contrast to the symptoms of the problem;

(3) Provide a strong conceptual framework for the proposed objectives and proposed plan, including the general design and specific procedures of the proposed plan, along with the management, evaluation, dissemination, and training procedures, when appropriate; and

(4) Describe what has been done previously to alleviate the problem and point out the gaps that will be alleviated by this specific proposed work.

(h) *Results, end products, outcomes, and dissemination.* (Maximum 9 points). The application clearly describes:

(1) What will be delivered to the government;

(2) The format in which the results, products, or outcomes will be delivered to the government.

(i) *Institutional capability and commitment.* (Maximum 4 points). The application provides adequate evidence of—

(1) Institutional or individual's experience and commitment to the proposed work; and

(2) Assurance of support from cooperating agencies, local educational agencies, postsecondary institiutions, business, industry, and labor, where applicable for successful implementation of the project.

(j) *Sex bias and stereotyping.* (Maximum 8 points.) The application provides appropriate plans to eliminate sex bias and stereotyping in the proposed results, end products, and outcomes, and the proposed dissemination plans.

(20 U.S.C. 2401)

2. Section 105.211 is revised to read as follows:

§ 105.211 Selection criteria.

The Commissioner uses the criteria in this section to evaluate applications for new awards. The maximum score for all of the criteria is 100 points.

(a) *Program improvement.* (Maximum 15 points). The application focuses on the improvement of occupational training opportunities for Indians and delineates the way in which the proposed program will contribute to improved programs for the specific target groups.

(b) *Need.* (Maximum 10 points). The need section clearly—

(1) Describes the need for the proposed activity;

(2) Provides specific evidence of the need;

(3) Indicates specifically how the need will be met; and

(4) Describes, where appropriate, ongoing and planned activities in the community relative to the need.

(c) *Objectives.* (Maximum 10 points). The objectives—

(1) Relate to the need;

(2) Are significant for vocational education;

(3) Clearly describe proposed program outcomes;

(4) Are capable of being attained; and

(5) Are measurable.

(d) *Plan.* (Maximum 15 points). The plan clearly describes the way in which the objectives will be accomplished by—

(1) The overall design for the proposed program; and

(2) The use of specific procedures to implement activities designed to accomplish each objective of each segment of the proposed program;

(3) A description of—

(i) Specific activities to be conducted in the proposed program;

(ii) Instruments to be used in the proposed program;

(iii) Instructional material to be used in the proposed program, if appropriate; and

(iv) Population to be served by the proposed program; and

(4) Statistical and analytical procedures, if appropriate.

(e) *Management plan.* (Maximum 10 points). The management plan adequately describes the way in which personnel and resources will be utilized to accomplish each objective, the overall design, and each major procedure.

(f) *Evaluation plan.* (Maximum 10 points). The plan includes valid and reliable instruments and procedures for assessing and documenting the impact of project results in terms of the achievement of project goals and objectives.

(g) *Applicant's staff competencies and experience.* (Maximum 10 points). Points will be awarded on the extent to which the application clearly describes—

(1) The competencies that are required for the proposed project;

(2) The names and qualifications (including project management qualifications) of the project director, key professional staff, advisory groups, and any consultants;

(3) Time commitments planned for the project by the project director, key staff, advisory groups, and any consultants;

(4) Evidence of past and successful experience of the proposed project director and key staff members in similar or related projects;

(5) Evidence of commitment to Section 7(b) of the Indian Self-Determination and Education Assistance Act.

(h) *Budget and cost effectiveness.* (Maximum 10 points). Points will be awarded on the extent to which the application provides a justifiable and itemized statement of cost which contains line items in the proposed budget and appears to be cost effective with respect to proposed results.

(i) *Institutional capability and commitment.* (Maximum 10 points). The application provides adequate evidence of—

(1) Institutional experience and commitment to the proposed work;

(2) Appropriate facilities and equipment; and

(3) Documented assurances of support from cooperating local educational agencies, postsecondary institutions, business, industry, or labor, if support from any of these groups is necessary for successful implementation of the project.

(20 U.S.C. 2303; 25 U.S.C. 450f.)

3. Section 105.606 is revised to read as follows:

§ 105.606 Selection criteria.

The Commissioner uses the criteria in this section to evaluate applications for new awards. The maximum score for all of the criteria is 100 points.

(a) *Plan of operation.* (Maximum 33 points).

(1) The Commissioner reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Commissioner looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (Maximum 25 points).

(1) The Commissioner reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Commissioner looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraph (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Commissioner considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (Maximum 10 points).

(1) The Commissioner reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Commissioner looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (Maximum 12 points).

(1) The Commissioner reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—45 CFR 100a.590 Evaluation by the grantee.

(2) The Commissioner looks for information that show methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (Maximum 3 points).

(1) The Commissioner reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) Commissioner looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(i) The equipment and supplies that the applicant plans to use are adequate.

(f) *Need.* (Maximum 10 points).

(1) Describes the need for the proposed bilingual vocational training;

(2) Provides specific evidence of the need;

(3) Indicates specifically how the need will be met; and

(4) Describes, where appropriate, ongoing and planned activities in the community relative to the need.

(g) *Institutional capability and commitment.* (Maximum 7 points). The application provides adequate evidence of—

(1) Institutional experience and commitment to the proposed work;

(2) Documented assurance of support from cooperating agencies, institutions, or community groups where applicable for successful implementation of the project.

(20 U.S.C. 2420)

4. Section 105.616 is revised to read as follows:

§ 105.616 Selection criteria.

The Commissioner uses the criteria in this section to evaluate applications for new awards. The maximum score for all of the criteria is 100 points.

(a) *Plan of operation.* (Maximum 25 points).

(1) The Commissioner reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Commissioner looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the projects;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (Maximum 25 points).

(1) The Commissioner reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Commissioner looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs(b)(2)(i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Commissioner considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (Maximum 10 points).

(1) The Commissioner reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Commissioner looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (Maximum 12 points).

(1) The Commissioner reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—45 CFR 100a.590 Evaluation by the grantee.

(2) The Commissioner looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (Maximum 3 points).

(1) The Commissioner reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Commissioner looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Need.* (Maximum 10 points). The need section clearly—

(1) Describes the need for the proposed instructor training;

(2) Provides specific evidence of the need;

(3) Indicates specifically how the need will be met; and

(4) Describes, where appropriate, ongoing and planned activities in the community relative to the need.

(g) *Institutional capability and commitment.* (Maximum 7 points). The application provides adequate evidence of—

(1) Appropriate accreditation of the applicant institution by regional or national associations and approval by appropriate State agencies of the course offered; and

(2) Documented assurance of support from cooperating agencies, institutions, or community groups where applicable for successful implementation of the project.

(h) *Ongoing vocational training.* (Maximum 4 points). The extent to which the applicant actually has an ongoing vocational training or vocational education program in the field for which persons are to be trained. Include a listing of the vocational courses offered by the applicant.

(i) *Language capabilities.* (Maximum 4 points). The extent to which the applicant institution can provide instructors with adequate language capabilities in the language other than English to be used in the bilingual job training program for which the instructors are being trained.

(20 U.S.C. 2420)

5. Section 105.626 is revised to read as follows:

§ 105.626 Selection criteria.

The Commissioner uses the criteria in this section to evaluate applications for new grants. The maximum score for all of the criteria is 100 points.

(a) *Plan of operation.* (Maximum 35 points).

(1) The Commissioner reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Commissioner looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrespresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (Maximum 10 points).

(1) The Commissioner reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Commissioner looks for information that shows—

(i) the qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii)

of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Commissioner considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (Maximum 5 points).

(1) The Commissioner reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Commissioner looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (Maximum 10 points).

(1) The Commissioner reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—45 CFR 100a.590 Evaluation by the grantee.

(2) The Commissioner looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (Maximum 3 points).

(1) The Commissioner reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Commissioner looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Need.* (Maximum 20 points). The need section clearly—

(1) Describes the national significance and the need in bilingual vocational training for the proposed project;

(2) Provides specific evidence of the need;

(3) Indicates specifically who are what will be helped; and

(4) Describes the problem rather than the symptoms of the problem.

(g) *Literature review.* (Maximum 5 points). The literature review is sufficiently comprehensive to—

(1) Establish the basis for the problem;

(2) Describe the problem in contrast to the symptoms of the problem;

(3) Provide a strong conceptual framework for the proposed objectives and proposed plan, including the general design and specific procedures of the proposed plan, along with the management, evaluation, dissemination, and training procedures (when appropriate); and

(4) Describe what has been done previously to alleviate the problem and point out the gaps that will be alleviated by this specific proposed work.

(h) *Results, end products, outcomes, and dissemination.* (Maximum 8 points). The application clearly describes—

(1) What will be delivered to the government; and

(2) The format in which the results, products, or outcomes will be delivered to the government.

(i) *Applicant's capability and commitment.* (Maximum 4 points). documented assurance of support from cooperating agencies, local educational agencies or postsecondary institutions, business, industry, and labor, where applicable for successful implementation of the project.

(20 U.S.C. 2420)

PART 121d—EARLY EDUCATION FOR HANDICAPPED CHILDREN

6. Part 121d is amended by adding a new § 121d.61 as follows:

§ 121d.61 Selection criteria.

The Commissioner uses the criteria in this section to evaluate applications for new grants under Subparts A, B, and C of this part. The criteria are not weighted.

(a) *Plan of operation.* (1) The Commissioner reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Commissioner looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (1) The Commissioner reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Commissioner looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Commissioner considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (1) The Commissioner reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Commissioner looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (1) The Commissioner reviews each application for information that shows the quality of the evalution plan for the project.

Cross-reference—45 CFR 100a.590 Evaluation by the grantee.

(2) The Commissioner looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible are

objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (1) The Commissioner reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Commissioner looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(20 U.S.C. 1423)

PART 121e—AUXILIARY ACTIVITIES

7. Section 121e.4 is revised to read as follows:

§ 121e.4 Selection criteria.

(a) Activities assisted under this part shall serve to enhance the effectiveness of the center or program to which they will be related.

(b) The activities shall serve to complement rather than displace the basic functions of the center or program to which they will be related.

(c) The criteria in paragraph (d) of this section apply to an application for a new grant under—

(1) 45 CFR Part 121b (Regional Resource Centers);

(2) 45 CFR Part 121c (Centers and Services for Deaf-Blind Children); or

(3) 45 CFR Part 121d (Early Education for Handicapped Children).

(d) *Additional criteria.*—(1) *Plan of operation.* (i) The Commissioner reviews each application for information that shows the quality of the plan of operation for the project.

(ii) The Commissioner looks for information that shows—

(A) High quality in the design of the project;

(B) An effective plan of management that insures proper and efficient administration of the project;

(C) A clear description of how the objectives of the project relate to the purpose of the program;

(D) The way the applicant plans to use its resources and personnel to achieve each objective; and

(E) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(2) *Quality of key personnel.* (i) The Commissioner reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(ii) The Commissioner looks for information that shows—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (d)(2)(ii) (A) and (B) of this section plans to commit to the project; and

(D) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(iii) To determine the qualifications of a person, the Commissioner considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(3) *Budget and cost effectiveness.* (i) The Commissioner reviews each application for information that shows that the project has an adequate budget and is cost effective.

(ii) The Commissioner looks for information that shows—

(A) The budget for the project is adequate to support the project activities; and

(B) Costs are reasonable in relation to the objectives of the project.

(4) *Evaluation plan.* (i) The Commissioner reviews each application for information that shows the quality of the evaluation plan for the project.

(Cross-reference.—45 CFR 100a.590 Evaluation by the grantee.

(ii) The Commissioner looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(5) *Adequacy of resources.* (i) The Commissioner reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(ii) The Commissioner looks for information that shows—

(A) The facilities that the applicant plans to use are adequate; and

(B) The equipment and supplies that the applicant plans to use are adequate.

(20 U.S.C. 1424)

PART 121f—TRAINING PERSONNEL FOR THE EDUCATION OF THE HANDICAPPED

8. Section 121f.20 is revised to read as follows:

§ 121f.20 Selection criteria.

The Commissioner uses the criteria in this section to evaluate applications for new awards. The criteria are not weighted.

(a) *Plan of operation.* (1) The Commissioner reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Commissioner looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (1) The Commissioner reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Commissioner looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Commissioner considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (1) The Commissioner reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Commissioner looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (1) The Commissioner reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—45 CFR 100a.590 Evaluation by the grantee.

(2) The Commissioner looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (1) The Commissioner reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Commissioner looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) The extent to which the applicant specifically provides evidence that program graduates are meeting the educational needs of handicapped children at the local, State, or national level.

(g) The extent to which program philosophy, program objectives, and activities implemented to attain program objectives are related to the educational needs of handicapped children.

(h) The extent to which—

(1) Present and former students;

(2) Employing agencies (school districts, State agencies, etc.); and

(3) Individuals (parents, practicing teachers, etc.), are involved in program planning, implemention, and evaluation.

(i) The extent to which the evaluation design and procedures—

(1) Provide for assessment of the effectiveness and efficiency of the use of program resources in the attainment of program objectives; and

(2) Provide for the collection of quantifiable program performance information including—

(i) The numbers of personnel prepared and placed in positions relevant to the education of handicapped children;

(ii) The type and location of positions accepted by program graduates;

(iii) The number of handicapped children served by program graduates;

(iv) The length of time that program graduates serve handicapped children;

(v) Employers evaluation of program graduates' proficiency; and

(vi) The effectiveness of program graduates in facilitating the educational progress of handicapped children.

(j) The extent to which the application describes procedures for assessing the impact, and in case of an application for continuation support, provides evidence of impact of the program upon other related programs within the institution, community programs for the education of handicapped children, and improvement of services for handicapped children at the local, State, and/or national level.

(k) The extent to which the application describes and specifies the various roles or positions for which students are prepared, the tasks associated with such roles, and the competencies that must be acquired to complete each task successfully.

(l) The extent to which the application includes a delineation of competencies that each program graduate will acquire and will subsequently exhibit and how the competencies will be evaluated.

(m) The extent to which substantive content and organization of the program are—

(1) Appropriate for the student's attainment of professional knowledge and competencies that are necessary for the provision of quality educational services for handicapped children; and

(2) Demonstrate an awareness of relevant methods, procedures, techniques, and instructional media or materials that can be used in the preparation of qualified educators of handicapped children.

(n) The extent to which appropriate practicum facilities are—

(1) Utilized for observation, participation, practice teaching, laboratory or clinical experience, internship, and other supervised experiences of adequate scope, combination, and length; and

(2) Accessible to the applicant and students.

(o) The amount of fiscal and other effort the applicant will contribute to the program, and a delineation of the procedures that will be implemented for the increase of such effort over a specified time period in relationship to the amount of Federal funds awarded for support of the program.

(20 U.S.C. 1432, 1434)

PART 121h—RESEARCH IN EDUCATION OF THE HANDICAPPED

9. Section 121h.7 is revised to read as follows:

§ 121h.7 Selection criteria for research projects.

The Commissioner uses the criteria in this section to evaluate applications for new grants. The maximum score for all of the criteria is 100 points.

(a) *Plan of operation.*

(1) The Commissioner reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Commissioner looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objection; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly. (10 points)

(b) *Quality of key personnel.* (1) The Commissioner reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Commissioner looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (2)(i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Commissioner considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides. (10 points)

(c) *Budget and cost effectiveness.*(1) The Commissioner reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Commissioner looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project. (10 points)

(d) *Evaluation plan.* (1) The Commissioner reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—45 CFR 100a.590 Evaluation by the grantee.

(2) The Commissioner looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable. (5 points)

(e) *Adequacy of resources.* (1) The Commissioner reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Commissioner looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate. (5 points)

(f) The potential importance of the project to the education of the handicapped. (15 points)

(g) The probable impact of proposed research and development products and the extent to which products can be expected to have a direct influence on the handicapped or personnel responsible for the education of the handicapped. (15 points)

(h) Technical soundness of the research and development plan and adequacy of specification of procedures. (30 points)

(20 U.S.C. 1441, 1442)

10. Section 121h.8 is revised to read as follows:

§ 121h.8 Selection criteria for model programs.

The Commissioner uses the criteria in this section to evaluate applications for new awards. The maximum score for all of the criteria is 100 points.

(a) *Plan of operation.*(1) The Commissioner reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Commissioner looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly. (10 points)

(b) *Quality of key personnel.* (1) The Commissioner reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Commissioner looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Commissioner considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides. (7 points)

(c) *Budget and cost effectiveness.* (1) The Commissioner reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Commissioner looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project. (10 points)

(d) *Evaluation plan.* (1) The Commissioner reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—45 CFR 100a.590 Evaluation by the grantee.

(2) The Commissioner looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable. (10 points)

(e) *Adequacy of resources.* (1) The Commissioner reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Commissioner looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate. (5 points)

(f) The importance and relevance of the program to the education of handicapped children. (10 points)

(g) The probable impact of proposed services and products. (10 points)

(h) The extent to which the program is eligible for consideration as a "model." (See § 121h.5). (15 points)

(i) Technical soundness of the proposal as judged by plans for assessment of a child's progress and appropriateness of program approach. (13 points)

(j) The extent to which the program plans for the development and implementation of individualized education programs. (See 45 CFR 121a.340). (5 points)

(k) The extent of coordination with other appropriate agencies. (5 points)

(20 U.S.C. 1441, 1442)

PART 121k—REGIONAL EDUCATION PROGRAM FOR HANDICAPPED PERSONS

11. Section 121k.18 is revised to read as follows:

§ 121k.18 Selection criteria.

The Commissioner uses the criteria in this section to evaluate applications for

new awards. The criteria are not weighted.

(a) *Plan of operation.* (1) The Commissioner reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Commissioner looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (1) The Commissioner reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Commissioner looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Commissioner considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (1) The Commissioner reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Commissioner looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (1) The Commissioner reviews each application for information that shows the quality of the evaluaiton plan for the project.

Cross-reference.—45 CFR 100a.590 Evaluation by the grantee.

(2) The Commissioner looks for information that shows methods of evaluating that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (1) The Commissioner reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Commissioner looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) Whether the program under this part will be carried out in facilities easily accessible to physically handicapped persons.

(g) Whether the program will be located in an area in which public transportation is readily available, or transportation will be provided at reasonable cost to handicapped persons participating in the program.

(h) Whether the program will serve handicapped persons for whom other appropriate education programs are not readily available.

(i) The likelihood that the services provided under the proposed program will be continued by the applicant following the expiration of Federal funding under this part as measured by evidence of financial and other commitment of the applicant to the program and other funds available to the program.

(20 U.S.C. 1424a)

PART 131—COLLEGE LIBRARY RESOURCES PROGRAM

12. Section 131.22 is amended by revising the title and the introductory paragraph to read as follows:

§ 131.22 Selection criteria—supplemental grants.

The Commissioner uses the criteria in this section, in accordance with the point scores in Appendix A to this part, to evaluate applications for supplemental grants.

* * * * *

13. Section 131.32 is revised to read as follows:

§ 131.32 Selection criteria—special purpose grants.

The Commissioner uses the criteria in this section to evaluate applications for special purpose grants. The maximum score for all of the criteria is 30 points for a Type A, Type C, or Type D grant. The maximum score for all of the criteria is 25 points for a Type B grant.

(a) *Type A grant.* (1) Location in a community characterized by significant social and economic deprivation. (4 points)

(2) Location in a designated Model Cities area. (3 points)

(3) Degree of concentration of graduate students from minority groups (American Indian, Negro, Oriental, Spanish-Surnamed American and other.) (3 points)

(4) Potential for strengthening and upgrading existing library materials to support the training of leaders to serve the disadvantaged and black communities described. (6 points)

(5) Degree to which grant and matching funds will meet the special needs described. (3 points)

(6) *Plan of operation.* (i) The Commissioner reviews each application for information that shows the quality of the plan of operation for the project.

(ii) The Commissioner looks for information that shows—

(A) High quality in the design of the project;

(B) An effective plan of management that insures proper and efficient administration of the project;

(C) A clear description of how the objectives of the project relate to the purpose of the program;

(D) The way the applicant plans to use its resources and personnel to achieve each objective; and

(E) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly. (3 points)

(7) *Quality of key personnel.* (i) The Commissioner reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(ii) The Commissioner looks for information that shows—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraph (a)(7) (ii) (A) and (B) of this section plans to commit to the project; and

(D) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(iii) To determine the qualifications of a person, the Commissioner considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides. (3 points)

(8) *Budget and cost effectiveness.* (i) The Commissioner reviews each application for information that shows that the project has an adequate budget and is cost effective.

(ii) The Commissioner looks for information that shows—

(A) The budget for the project is adequate to support the project activities; and

(B) Costs are reasonable in relation to the objectives of the project. (2 points)

(9) *Evaluation plan.* (i) The Commissioner reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—45 CFR 100a.590 Evaluation by the grantee.

(ii) The Commissioner looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable. (2 points)

(10) *Adequacy of resources.* (i) The Commissioner reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(ii) The Commissioner looks for information that shows—

(A) The facilities that the applicant plans to use are adequate; and (B) the equipment and supplies that the applicant plans to use are adequate. (1 point)

(b) *Type B grant.* (1) Degree of concentration of graduate students from minority groups (American Indian, Negro, Oriental, Spanish-Surnamed American and other) in professional schools. (3 points)

(2) Availability of special collections to support the research and training of graduate students who expect to work in areas affecting the economically disadvantaged of the community. (7 points)

(3) Availability of printed catalog or other guides to collection and number of academic institutions receiving and utilizing the above catalogs and guides. (3 points)

(4) Degree to which the program of acquisition will contribute to the criteria described in subparagraphs (2) and (3) of this paragraph (b). (3 points)

(5) *Plan of operation.* (i) The Commissioner reviews each application for information that shows the quality of the plan of operation for the project.

(ii) The Commissioner looks for information that shows—

(A) High quality in the design of the project;

(B) An effective plan of management that insures proper and effective administration of the project;

(C) A clear description of how the objectives of the project relate to the purpose of the program;

(D) The way the applicant plans to use its resources and personnel to achieve each objective; and

(E) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented; such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly. (3 points)

(6) *Quality of key personnel.* (i) The Commissioner reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(ii) The Commissioner looks for information that shows—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs(b)(6)(ii) (A) and (B) of this section plans to commit to the project; and

(D) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(iii) To determine the qualifications of a person, the Commissioner considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides. (2 points)

(7) *Budget and cost effectiveness.* (i) The Commissioner reviews each application for information that shows that the project has an adequate budget and is cost effective.

(ii) The Commissioner looks for information that shows—

(A) The budget for the project is adequate to support the project activities; and

(B) Costs are reasonable in relation to the objectives of the project. (2 points)

(8) *Evaluation plan.* (i) The Commissioner reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—45 CFR 100a.590 Evaluation by the grantee.

(ii) The Commissioner looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable. (1 point)

(9) *Adequacy of resources.* (i) The Commissioner reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(ii) The Commissioner looks for information that shows—

(A) The facilities that the applicant plans to use are adequate; and

(B) The equipment and supplies that the applicant plans to use are adequate. (1 point)

(c) *Type C grant.* (1) Degree to which members of combinations are supportive of research and training activities which prepare persons to work in areas affecting the disadvantaged, including those supported by other Federal programs. (4 points)

(2) Number of institutions applying as members of the combination submitting application. (4 points)

(3) Availability and adequacy of catalog or other guides to collection and existence of computerized system or other center in operation. (4 points)

(4) Adequate evidence that combination will be able to continue without the support of Federal funds. (4 points)

(5) Degree to which grant and matching funds will meet the special needs described. (3 points)

(6) *Plan of operation.* (i) The Commissioner reviews each application for information that shows the quality of the plan of operation for the project.

(ii) The Commissioner looks for information that shows—

(A) High quality in the design of the project;

(B) An effective plan of management that insures proper and efficient administration of the project;

(C) A clear description of how the objectives of the project relate to the purpose of the program;

(D) The way the applicant plans to use its resources and personnel to achieve each objective; and

(E) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly. (3 points)

(7) *Quality of key personnel.* (i) The Commissioner reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(ii) The Commissioner looks for information that shows—

(A) The Qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (c)(7)(ii) (A) and (B) of this section plans to commit to the project; and

(D) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(iii) To determine the qualifications of a person, the Commissioner considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides. (3 points)

(8) *Budget and cost effectiveness.* (i) The Commissioner reviews each application for information that shows that the project has an adequate budget and is cost effective.

(ii) The Commissioner looks for information that shows—

(A) The budget for the project is adequate to support the project activities; and

(B) Costs are reasonable in relation to the objectives of the project. (2 points)

(9) *Evaluation plan.* (i) The Commissioner reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—45 CFR 100a.590. Evaluation by the grantee.

(ii) The Commissioner looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable. (2 points)

(10) *Adequacy of resources.* (i) The Commissioner reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(ii) The Commissioner looks for information that shows—

(A) The facilities that the applicant plans to use are adequate; and

(B) The equipment and supplies that the applicant plans to use are adequate. (1 point)

(d) *Type D grant.* (1) Number and type of institutions of higher education with which applicant has a formal, cooperative agreement to provide library and information services. (4 points)

(2) Availability of a published catalog of or other guides to the available collection. (4 points)

(3) Existence of a comprehensive collection which meets the special needs of institutions of higher education. (7 points)

(4) Potential for strengthening and upgrading existing library materials to support the training of leaders to serve the disadvantaged. (4 points)

(5) *Plan of operation.* (i) The Commissioner reviews each application for information that shows the quality of the plan of operation for the project.

(ii) The Commissioner looks for information that shows—

(A) High quality in the design of the project;

(B) An effective plan of management that insures proper and efficient administration of the project;

(C) A clear description of how the objectives of the project relate to the purpose of the program;

(D) The way the applicant plans to use its resources and personnel to achieve each objective; and

(E) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly. (3 points)

(6) *Quality of key personnel.* (i) The Commissioner reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(ii) The Commissioner looks for information that shows—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (d)(6)(ii) (A) and (B) of this section plans to commit to the project; and

(D) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(iii) To determine the qualifications of a person, the Commissioner considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides. (3 points)

(7) *Budget and cost effectiveness.* (i) The Commissioner reviews each application for information that shows that the project has an adequate budget and is cost effective.

(ii) The Commissioner looks for information that shows—

(A) The budget for the project is adequate to support the project activities; and

(B) Costs are reasonable in relation to the objectives of the project. (2 points)

(8) *Evaluation plan.* (i) The Commissioner reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—45 CFR 100a.590 Evaluation by the grantee.

(ii) The Commissioner looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are

objective and produce data that are quantifiable. (2 points)

(9) *Adequacy of resources.* (i) The Commissioner reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(ii) The Commissioner looks for information that shows—

(A) The facilities that the appliant plans to use are adequate; and

(B) The equipment and supplies that the applicant plans to use are adequate. (1 point)

(20 U.S.C. 1024)

PART 132—GRANTS FOR TRAINING IN LIBRARIANSHIP

14. Section 132.9 is revised to read as follows:

§ 132.9 Selection criteria—institute grants.

The Commissioner uses the criteria in paragraph (a) of Appendix A to this part to evaluate applications for institute grants. The maximum score for all of the criteria is 207 points.

(20 U.S.C. 1033)

15. Section 132.11 is amended by revising the title and paragraph (a) to read as follows:

§ 132.11 Selection criteria—fellowship grants.

(a) The Commissioner uses the criteria in paragraph (b) of Appendix A to this part to evaluate applications for fellowship grants. The maximum score for all of the criteria is 108 points.

* * * * *

16. Section 132.12 is amended by revising the title and the introductory paragraph to read as follows:

§ 132.12 Selection criteria and priorities—traineeship grants.

The Commissioner uses the criteria in paragraph (c) of Appendix A to this part to evaluate applications for traineeship grants. The maximum score for all of the criteria is 111 points. The review of applications will also take into account the following priorities:

* * * * *

16–1. Appendix A to Part 132 is revised to read as follows:

Appendix A—Grants for Training in Librarianship

Selection Criteria

(a) *Institute grants.* (Maximum 207 points):

(1) The extent to which the proposed program is jusitified. (10 points)

Consideration will be given to such questions as—

(i) Will the program contribute to reduction of staff shortage?

(ii) Does the program address itself to an appropriate training need?

(iii) Is the subject important and timely?

(iv) Is the applicant well prepared to offer such training?

(2) The extent to which participant selection is appropriate. (10 points)

Consideration will be given to such questions as—

(i) Are the selection criteria appropriate and realistic to meet program objectives?

(ii) Is the need as expressed in the program justification, above, related accurately to the duties of the participant?

(iii) Can the proposed number of participants be accommodated by proposed program method?

(3) The extent to which the proposed program will achieve high quality and effectiveness. (30 points)

Consideration will be given to such questions as—

(i) Is the subject appropriate for intensive or long-range traning?

(ii) Is there adequate program potential for the solution of the training problem or need?

(iii) Is the proposed professional education sound?

(iv) Is there a satisfactory blend of the theoretical and the practical?

(v) Are the training approaches new and imaginative?

(vi) Does the proposed program supplement existing training? Advance study level?

(vii) Will participants be involved in innovative and creative experiences?

(viii) Will the program maintain focus on the subject?

(4) The extent to which the institute format is appropriate. (5 points)

Consideration will be given to such questions as—

(i) Is the type of institute (self-contained or non-self-contained) properly chosen?

(ii) Is the proposed timing well chosen?

(iii) Is the length of the institute right? Too long? Too short?

(5) The extent to which program purposes will be achieved. (30 points)

Consideration will be given to such questions as—

(i) To what degree will the proposed program substantially contribute to librarianship training?

(ii) To what degree will prospects for employment and/or advancement be provided?

(iii) To what degree will training opportunities be provided for minority group and/or disadvantaged persons?

(6) Potential for using the results of the project in other projects or programs for similar educational purposes. (2 points)

(7) Provision for disseminating the results of the project and for making project materials available to interested parties. (5 points)

(8) *Plan of operation.*

(i) The Commissioner reviews each application for information that shows the quality of the plan of operation for the project.

(ii) The Commissioner looks for information that shows—

(A) High quality in the design of the project;

(B) An effective plan of management that insures proper and efficient administration of the project;

(C) A clear description of how the objectives of the project relate to the purpose of the program;

(D) The way the applicant plans to use its resources and personnel to achieve each objective; and

(E) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly (40 points)

(9) *Quality of key personnel.*

(i) The Commissioner reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(ii) The Commissioner looks for information that shows—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (a)(9)(ii)(A) and (B) of this section plans to commit to the project; and

(D) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(iii) To determine the qualifications of a person, the Commissioner considers evidence of past experience and training, in fields related to the

objectives of the project, as well as other information that the applicant provides. (25 points)

(10) *Budget and cost effectiveness.*

(i) The Commissioner reviews each application for information that shows that the project has an adequate budget and is cost effective.

(ii) The Commissioner looks for information that shows—

(A) The budget for the project is adequate to support the project activities; and

(B) Costs are reasonable in relation to the objectives of the project. (15 points)

(11) *Evaluation plan.*

(i) The Commissioner reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—45 CFR 100a.590 Evaluation by the grantee.

(ii) The Commissioner looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable. (25 points)

(12) *Adequacy of resources.*

(i) The Commissioner reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(ii) The Commissioner looks for information that shows—

(A) The facilities that the applicant plans to use are adequate; and

(B) The equipment and supplies that the applicant plans to use are adequate. (10 points)

(b) *Fellowship grants.* (Maximum 108 points):

(1) *Adequacy of program content.* (9 points)

(i) Are the character and scope of the program appropriate, sound, modern, and cohesive?

(ii) Are contemplated changes well conceived?

(iii) Is the catalog information adequate?

(iv) Do common course requirements meet acceptable standards?

(v) Is the student practicum component sufficient?

(2) *Adequacy of program content as related to objectives.* (5 points)

(54 CFR 100a.26(b)(8)(i))

Consideration will be given to such questions as—

What is the extent to which objectives would be achieved by program content?

(3) *Adequacy of qualifications for admission.* (10 points) consideration will be given to such questions as—

(i) Are selection criteria for fellows suitable and sufficient?

(ii) Are applied tests well recommended?

(iii) Are scholarship requirements adequate?

(4) *Level of institutional expenditures.* (10 points)

Consideration will be given to such questions as—

(i) Are expenditures increasing for education in librarianship?

(ii) What is the relationship of expenditures to student enrollment changes?

(iii) Are expenditures high, medium, or low compared to other library education programs with similar curricula and student enrollment?

(5) *Quantity of enrollment and degrees awarded.* (5 points)

Consideration will be given to such questions as—

(i) Are enrollment and degrees increasing?

(ii) Is the ratio of degrees awarded to enrollment satisfactory?

(6) *Quantity of institutional fellowships and scholarships.* (5 points)

Consideration will be given to such questions as—

(i) Are institutional fellowships and scholarships increasing or decreasing?

(ii) What is the ratio of the requested number of Title II–B fellowships to the institutionally supported number?

(7) *Adequacy of prospects for increasing training opportunities.* (15 points)

Consideration will be given to such questions as—

(i) Is there any evidence that the program will be adequately promoted and that there will be effective recruitment?

(ii) Was the priority selected appropriate to the applicant's capabilities or record of experience in this field?

(8) *Prospect for increasing training opportunities for minority group and/or disadvantaged persons.* (10 points)

(9) *Plan of operation.* (14 points)

(i) The Commissioner reviews each application for information that shows the quality of the plan of operation for the project.

(ii) The Commissioner looks for information that shows—

(A) High quality in the design of the project;

(B) An effective plan of management that insures proper and efficient administration of the project;

(C) A clear description of how the objectives of the project relate to the purpose of the program;

(D) The way the applicant plans to use its resources and personnel to achieve each objective; and

(E) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(10) *Quality of key personnel.* (10 points)

(i) The Commissioner reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(ii) The Commissioner looks for information that shows—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (b)(10)(ii)(A) and (B) of this section plans to commit to the project; and

(D) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(iii) To determine the qualifications of person, the Commissioner considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(11) *Budget and cost effectiveness. (5 points)*

(i) The Commissioner reviews each application for information that shows that the project has an adequate budget and is cost effective.

(ii) The Commissioner looks for information that shows—

(A) The budget for the project is adequate to support the project activities; and

(B) Costs are reasonable in relation to the objectives of the project.

(12) *Evaluation plan.* (5 points)

(i) The Commissioner reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—45 CFR 100a.590 Evaluation by the grantee.

(ii) The Commissioner looks for information that shows methods of

evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(13) *Adequacy of resources.* (5 points)

(i) The Commissioner reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(ii) The Commissioner looks for information that shows—

(A) The facilities that the applicant plans to use are adequate; and

(B) The equipment and supplies that the applicant plans to use are adequate.

(c) *Traineeship grants.* (Maximum 111 points)

(1) Whether and how the program to be offered substantially furthers the objective of increasing the opportunities of minority group persons and/or disadvantaged persons throughout the Nation for advanced training in librarianship and information science which would result in professional advancement and upward mobility. (17 points)

(2) Whether and how the program to be offered substantially furthers the objective of training librarians to work more responsively with the disadvantaged and of developing viable alternatives to traditional library service patterns. (16 points)

(3) Degree of internship opportunities available through cooperating library agencies and appropriateness of those opportunities to the program objectives. (16 points)

(4) Appropriateness of behavioral objectives as related to the program objectives and the recruitment criteria (16 points)

(5) Degree of individualization of program activities and objectives. (16 points)

(6) *Plan of operation.* (10 points)

(i) The Commissioner reviews each application for information that shows the quality of the plan of operation for the project.

(ii) The Commissioner looks for information that shows—

(A) High quality in the design of the project;

(B) An effective plan of management that insures proper and efficient administration of the project;

(C) A clear description of how the objectives of the project relate to the purpose of the program; and

(D) The way the applicant plans to use its resources and personnel to achieve each objective.

(E) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(7) *Quality of key personnel.* (7 points)

(i) The Commissioner reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(ii) The Commissioner looks for information that shows—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (c)(7)(ii) (A) and (B) of this section plans to commit to the project; and

(D) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourage applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(iii) To determine the qualifications of a person, the Commissioner considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(8) *Budget and cost effectiveness.* (5 points)

(i) The Commissioner reviews each application for information that shows that the project has an adequate budget and is cost effective.

(ii) The Commissioner looks for information that shows—

(A) The budget for the project is adequate to support the project activities; and

(B) Costs are reasonable in relation to the objectives of the project.

(9) *Evaluation plan.* (5 points)

(i) The Commissioner reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—45 CFR 100a.590 Evaluation by the grantee.

(ii) The Commissioner looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantificable.

(10) *Adequacy of resources.* (3 points)

(i) The Commissioner reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(ii) The Commissioner looks for information that shows—

(A) The facilities that the applicant plans to use are adequate; and

(B) The equipment and supplies that the applicant plans to use are adequate.

(20 U.S.C. 1033)

PART 133—LIBRARY RESEARCH AND DEMONSTRATION

17. Section 133.7 is amended by revising the title of the section and paragraph (c) to read as follows:

§ 133.7 Special consideration; selection criteria.

* * * * *

(c) The Commissioner uses the criteria in Appendix A to this part to evaluate applications for new grants and proposals for new contracts. The maximum score for all of the criteria is 100 points.

(20 U.S.C. 1034)

18. Appendix A to Part 133 is revised to read as follows:

Appendix A—Selection Criteria

(a) The Commissioner uses the following criteria in accordance with § 133.7.

(1) *Significance.* The proposed project promises to contribute to the solution of an important library problem, the improvement of operations or services in a significant number of libraries, or the fulfillment of unmet informational cultural or educational needs; and the relevance of the project to special consideration as reflected in the program regulation. (16 points)

(2) *Problem and needs assessment.* The proposal identifies and demonstrates by objective evidence the nature and magnitude of the needs to be addressed by the proposed program, the degree of the applicant's demonstrated knowledge of previous successes and failures with the same or similar programs, and the ability to accommodate them. (5 points)

(3) *Resources and resource management.* The application indicates that the project will be operated with adequate resources and effective management. Consideration will be given to the following factors:

(i) Coordination with and maximum utilization of existing library resources—(3 points)

(ii) Appropriate utilization of specialists, consultants, community advisory boards, project advisory

boards, and paraprofessionals where necessary—(3 points)

(iii) A budget that minimizes or excludes purchase of books, equipment, and printing and in general does not provide for operational money except as necessary to support the proposed project—(4 points)

(4) *Dissemination.* The proposal contains provisions which promise to result in adequate dissemination of the results of the proposed program and will make outputs available through commercial publications, published articles, conference papers, audio-visual presentations or in other ways as appropriate. (5 points)

(5) *Continuity and replication of project.* The proposed program is designed in a manner to insure the continuity of the project or parts of it at the site selected or its replication at other sites as well as strength of commitment to continuity and where appropriate replication at other sites in supporting letters and documents. (10 points)

(6) *Plan of operation.* (i) The Commissioner reviews each application for information that shows the quality of the plan of operation for the project.

(ii) The Commissioner looks for information that shows—

(A) High quality in the design of the project;

(B) An effective plan of management that insures proper and efficient administration of the project;

(C) A clear description of how the objectives of the project relate to the purpose of the program;

(D) The way the applicant plans to use its resources and personnel to achieve each objective; and

(E) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly. (20 points)

(7) *Quality of key personnel.* (i) The Commissioner reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(ii) The Commissioner looks for information that shows—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (a)(7)(ii)(A) and (B) of this section plans to commit to the project; and

(D) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(iii) To determine the qualifications of a person, the Commissioner considers evidence of past experience and training, in fields related to the project, as well as other information that the applicant provides. (12 points)

(8) *Budget and cost effectiveness.* (i) The Commissioner reviews each application for information that shows that the project has an adequate budget and is cost effective.

(ii) The Commissioner looks for information that shows—

(A) The budget for the project is adequate to support the project activities; and

(B) Costs are reasonable in relation to the objectives of the project. (5 points)

(9) *Evaluation plan.* (i) The Commissioner reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference—45 CFR 100a.590 Evaluation by the grantee.

(ii) The Commissioner looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable. (5 points)

(10) *Adequacy of resources.* (i) The Commissioner reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(ii) The Commissioner looks for information that shows—

(A) The facilities that the applicant plans to use are adequate, and

(B) The equipment and supplies that the applicant plans to use are adequate. (3 points)

(20 U.S.C. 1031–1034)

PART 136—STRENGTHENING RESEARCH LIBRARY RESOURCES.

19. Section 136.06 is revised to read as follows:

§ 136.06 Selection criteria.

The Commissioner uses the criteria in this section to evaluate applications for new grants. The maximum score for all of the criteria is 110 points.

(a) *Significance as a major research library.* The strength of the applicant in meeting each of the following elements of a major research library:

(1) The extent to which the applicant's library collection makes a significant contribution to higher education and research (16 points). Consideration will be given to such factors as—

(i) Major research projects for which the library has made resources available in the past fiscal year (only a general and brief summary of information is expected in the application);

(ii) For institutions of higher education, the amount the institution expended in Federal and/or other research funds, and the number of projects conducted by the institution with these funds in the past fiscal year;

(iii) Other evidence of substantial service to researchers and scholars; and

(iv) For institutions of higher education, the number of doctoral programs offered and the number of doctoral degrees awarded in the past fiscal year.

(2) The extent to which the applicant's library collections are broadly based (12 points). Consideration will be given to such factors as—

(i) The breadth of the library collections with respect to the number of subject areas covered or the comprehensiveness of special collections in particular subject areas;

(ii) The size of the collection with respect to volumes and titles, manuscripts, microforms, and other types of materials; and

(iii) The number of current periodical subscriptions.

(3) The extent to which the applicant's library collections are recognized as having national or international significance for scholarly research (8 points). Consideration will be given to such factors as—

(i) The number of interlibrary loans (including copies in lieu of originals) made by the applicant during the past fiscal year to libraries located outside the State in which the applicant is located;

(ii) The number of such loans to libraries located outside the regional geographic area in which the applicant is located;

(iii) The number of such loans to libraries located outside the United States,

(iv) The extent to which loans of the applicant's materials described in paragraphs (a)(3) (i)–(iii) of this section are made under cooperative arrangements by the applicant with libraries in other States, regions, and countries; and

(v) Other evidence of national or international significance for scholarly research.

(4) The extent to which the applicant's library collections are of a unique nature, and contain material not widely available (8 points). Consideration will be given to such factors as—

(i) The number and nature of special collections containing research materials not widely available; and

(ii) The availability of printed (or otherwise published) catalogs or other guides to the special collections.

(5) The extent to which the library collections are in substantial demand by researchers and scholars not connected with the applicant institution (4 points). Consideration will be given to such factors as—

(i) The number and type of institutions with which the applicant has formal, cooperative agreements for library and information services;

(ii) The extent to which the library lends more on interlibrary loans than it borrows; and

(iii) The extent of loan requests from users outside the library's primary clientele.

(20 U.S.C. 1041, 1043)

(b) *Nature of project.* (1) The extent to which the specific objectives and activities of the project are designed to contribute to the purposes of this part (20 points) by—

(i) Helping the applicant to maintain and stengthen its library collections, with particular regard to whether the project builds upon one or more existing special collections of the applicant which have national or international significance for scholarly research; and/or

(ii) Making the applicant's research holdings available to other libraries for wider use by researchers and scholars. In applying this factor, the Commissioner considers—

(A) The extent to which the project is designed to increase the availability of existing collections of the applicant which have national or international significance for scholarly research; and

(B) The extent to which the project will strengthen the applicant's capacity for participating in library networks and other cooperative library arrangements for sharing of library resources.

(2) The applicant's institutional commitment and capability to continue and build upon the Federal project upon its expiration (4 points).

(3) The extent to which the specific proposed activities and expenditures under the project are new and innovative activities or are designed to expand upon and supplement the applicant's activities and expenditures (4 points).

(4) *Plan of operation.*

(i) The Commissioner reviews each application for information that shows the quality of the plan of operation for the project.

(ii) The Commissioner looks for information that shows—

(A) High quality in the design of the project;

(B) An effective plan of management that insures proper and efficient administration of the project;

(C) A clear description of how the objectives of the project relate to the purpose of the program;

(D) The way the applicant plans to use its resources and personnel to achieve each objective; and

(E) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly. (11 points)

(5) *Quality of key personnel.*

(i) The Commissioner reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(ii) The Commissioner looks for information that shows—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (b)(5)(ii) (A) and (B) of this section plans to commit to the project; and

(D) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(iii) To determine the qualifications of a person, the Commissioner considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides. (8 ponts)

(6) *Budget and cost effectiveness.*

(i) The Commissioner reviews each application for information that shows that the project has an adequate budget and is cost effective.

(ii) The Commissioner looks for information that shows—

(A) The budget for the project is adequate to support the project activities; and

(B) Costs are reasonable in relation to the objectives of the project. (6 points)

(7) *Evaluation plan.*

(i) The Commissioner reviews each application for information that shows the quality for the evaluation plan for the project.

Cross-reference.—45 CFR 100a.590 Evaluation by the grantee.

(ii) The Commissioner looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable. (6 points)

(8) *Adequacy of resources.*

(i) The Commissioner reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(ii) The Commissioner looks for information that shows—

(A) The facilities that the applicant plans to use are adequate; and

(B) The equipment and supplies that the applicant plans to use are adequate. (3 points)

(c) *Projects eligible under other Federal programs.* Notwithstanding the criteria in paragraphs (b)(8)(ii) (A) and (B) of this section, the Commissioner will not fund a project eligible for assistance under other Federal programs authorizing grants to support research libraries, such as the Medical Library Assistance Act of 1965 (Pub. L. 89–291), unless the application—

(1) Documents that payments under this part will not duplicate payments under other Federal programs; and

(2) Demonstrates a special need for funding under this part.

(20 U.S.C. 1041)

PART 146—MODERN FOREIGN LANGUAGE AND AREA STUDIES

20. The title and paragraph (a) of § 146.14 are revised as follows:

§ 146.14 Selection criteria-centers.

(a) The Commissioner uses the criteria in this section to evaluate applications for new awards. The maximum score for all of the criteria is 80 points.

(1) *Plan of operation.* (8 points)

(i) The Commissioner reviews each application for information that shows the quality of the plan of operation for the project.

(ii) The Commissioner looks for information that shows—

(A) High quality in the design of the project;

(B) An effective plan of management that insures proper and efficient administration of the project;

(C) A clear description of how the objectives of the project relate to the purpose of the program;

(D) The way the applicant plans to use its resources and personnel to achieve each objective; and

(E) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(2) *Quality of key personnel.* (7 points)

(i) The Commissioner reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(ii) The Commissioner looks for information that shows—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (a)(2)(ii) (A) and (B) of this section plans to commit to the project; and

(D) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(iii) To determine the qualifications of a person, the Commissioner considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(3) *Budget and cost effectiveness.* (10 points)

(i) The Commissioner reviews each application for information that shows that the project has an adequate budget and is cost effective.

(ii) The Commissioner looks for information that shows—

(A) The budget for the project is adequate to support the project activities; and

(B) Costs are reasonable in relation to the objectives of the project.

(4) *Evaluation plan.* (5 points)

(i) The Commission reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—45 CFR 100a.590 Evaluation by the grantee.

(ii) The Commissioner looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(5) *Adequacy of resources.* (5 points)

(i) The Commissioner reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(ii) The Commissioner looks for information that shows—

(A) The facilities that the applicant plans to use are adequate; and

(B) The equipment and supplies that the applicant plans to use are adequate.

(6) (5 points) The quality of the institution's existing instruction for the world area or topic for which Federal assistance is requested, as evidenced by existing course offerings, faculty qualifications, and the nature and extent of relevant library holdings.

(7) (5 points) The extent to which the proposed instructional activities of the center will strengthen existing international studies of the institution both in range and in depth.

(8) (5 points) The extent to which cooperative arrangements have been worked out with other departments, schools, and special and professional programs of the grantee institution and the extent to which the center includes appropriate multi- and inter-disciplinary instruction.

(9) (5 points) The regular coursework, language training, courses in area of international studies, and provisions for overseas experience which will be provided students participating in center programs.

(10) (5 points) The nature and extent of assistance to be provided by the center for educational outreach activities.

(11) (5 points) The extent to which provision is made by the institution for overseas experience for faculty and students, and for cooperation with foreign scholars, institutions, and governments.

(12) (5 points) Likelihood of achieving results.

(13) (5 points) Need for the project in the area served by the applicant.

(14) (5 points) Expected potential for using the results of the project in other projects for similar purposes.

21. Paragraph (b) of § 146.14 is deleted.

§ 146.14 Selection criteria—centers.

* * * * *

(b) [Deleted].

22. Section 146.24 is revised to read as follows:

§ 146.24 Selection criteria—graduate and undergraduate international studies programs.

The Commissioner uses the criteria in this section to evaluate applications for graduate and undergraduate studies programs. The maximum score for all of the criteria is 70 points.

(a) *Plan of operation.* (8 points)

(1) The Commissioner reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Commissioner looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (5 points)

(1) The Commissioner reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Commissioner looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages

applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Commissioner considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (8 points)

(1) The Commissioner reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Commissioner looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (7 points)

(1) The Commissioner reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—45 CFR 100a.590 Evaluation by the grantee.

(2) The Commissioner looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (14 points)

(1) The Commissioner reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Commissioner looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) (6 points) The international nature, contemporary relevance, and interdisciplinary and comparative dimensions of the program.

(g) (6 points) The extent to which a clearly improved educational experience will be available at the institution for students within two years and the caliber of program that will be continued after Federal support is withdrawn.

(h) (6 points) Need for the project in the area to be served by the applicant.

(i) (5 points) Likelihood of achieving results.

(j) (5 points) Expected potential for using the results of the project in other projects for similar purposes.

(20 U.S.C. 511(a))

23. Section 146.33 is revised to read as follows:

§ 146.33 Selection criteria—institutional fellowship quotas.

The Commissioner uses the criteria in this section to evaluate applications from institutions of higher education for quotas of foreign language and area studies fellowships. The criteria are not weighted.

(a) *Plan of operation.* (1) The Commissioner reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Commissioner looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (1) The Commissioner reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Commissioner looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b) (2)(i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Commissioner considers evidence of past experience and training, in fields related to the objectives of the project as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (1) The Commissioner reviews each application for information that shows the project has an adequate budget and is cost effective.

(2) The Commissioner looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (1) The Commissioner reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—45 CFR 100a.590 Evaluation by the grantee.

(2) The Commissioner looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (1) The Commissioner reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Commissioner looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f)(1) The extent to which an institution which is applying for a quota of fellowships in African studies includes as part of its language and area studies program such disciplines as economics, history, humanities (art, drama, music, philosophy, religion), sociology, and languages other than Swahili;

(2) The extent to which an institution which is applying for a quota of fellowships in East Asian studies includes as part of its language and area studies program such disciplines as anthropology, economics, geography, sociology, and humanities (art, drama, music, philosophy, religion);

(3) The extent to which an institution which is applying for a quota of fellowships in East European Studies includes as a part of its language and area studies program such disciplines as anthropology, geography, humanities (art, drama, music, philosophy, religion);

sociology, and languages other than Russian;

(4) The extent to which an institution which is applying for a quota of fellowships in Latin American studies includes as part of its language and area studies program such disciplines as humanities (art, drama, music, philosophy, religion); sociology, Portuguese, and American Indian languages;

(5) The extent to which an institution which is applying for a quota of fellowships in Middle Eastern studies includes as part of its language and area studies program such disciplines as anthropology, economics, geography, humanities (art, drama, music, philosophy, religion); political science, sociology, and languages other than Hebrew;

(6) The extent to which an institution which is applying for a quota of fellowships in South Asian studies includes as part of its language and area studies program such disciplines as anthropology, humanities (art, drama, music, philosophy, religion); linguistics, literature, sociology, and geography;

(7) The extent to which an institution which is applying for a quota of fellowships in Southwest Asian studies includes as part of its language and area studies program such disciplines as economics, history, humanities (art, drama, music, philosophy, religion), linguistics, literature, and sociology; and

(8) The extent to which an institution which is applying for a quota of fellowships in Western European studies includes as part of its language and area studies program such disciplines as anthropology, economics, geography, philosophy and religion, political economy, sociology, and languages other than French, German, Italian, or Spanish.

(g) The quality of the institution's existing foreign language and area studies program for the area for which a quota of fellowships is being requested as evidenced by course offerings, faculty, and library holdings.

(h) The degree to which the center or the program of the institution has provided for intra-institutional cooperation with other foreign language and area programs and the nature and extent of coordination with the institution's professional schools and other special university programs.

(i) The degree of institutional commitment to the development of its foreign language and area studies program or center as evidenced by faculty appointments, university scholarships and teaching assistantships, funding of library acquisitions, and continuing support from the institution's general funds.

(j) The degree requirements of the institution's foreign language and area studies center or program and whether proficiency in one or more foreign language is required.

(k) The extent to which the institution's foreign language and area studies center or program provides extra-curricular activities which enhance the student's foreign language proficiency and knowledge of the world area he is studying.

(l) The extent to which the institution's center or program includes in its offerings professional training such as business, law, journalism, or education, and the quality of such offerings.

(m) Likelihood of achieving results.

(n) Need for the project in the area to be served by the applicant.

(o) Expected potential for using the results of the project in other projects for similar purposes;

(p) Lowest priority will be given to applications for fellowships from centers or programs focusing on France, Germany, Italy, and Spain.

(20 U.S.C. 511(b))

24. Section 146.55 is revised to read as follows:

§ 146.55 Selection criteria—research projects.

(a) The Commissioner uses the criteria in this paragraph to evaluate applications for research, studies, and surveys. The maximum score for all of the criteria is 60 points.

(1) *Plan of operation.* (6 points)

(i) The Commissioner reviews each application for information that shows the quality of the plan of operation for the project.

(ii) The Commissioner looks for information that shows—

(A) High quality in the design of the projects;

(B) An effective plan of management that insures proper and efficient administration of the project;

(C) A clear description of how the objectives of the project relate to the purpose of the program;

(D) The way the application plans to use its resources and personnel to achieve each objective; and

(E) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(2) *Quality of key personnel.* (5 points)

(i) The Commissioner reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(ii) The Commissioner looks for information that shows—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (a)(2)(ii) (A) and (B) of this section plans to commit to the project; and

(D) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(iii) To determine the qualifications of a person, the Commissioner considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(3) *Budget and cost effectiveness.* (5 points)

(i) The Commissioner reviews each application for information that shows that the project has an adequate budget and is cost effective.

(ii) The Commissioner looks for information that shows—

(A) The budget for the project is adequate to support the project activities; and

(B) Costs are reasonable in relation to the objectives of the project.

(4) *Evaluation plan.* (4 points)

(i) The Commissioner reviews each application for information that shows the quality of the evaluation plan for the project.

Cross reference—45 CFR 100a.590 Evaluation by the grantee.

(ii) The Commissioner looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(5) *Adequacy of resources.* (5 points)

(i) The Commissioner reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(ii) The Commissioner looks for information that shows—

(A) The facilities that the applicant plans to use are adequate; and

(B) The equipment and supplies that the applicant plans to use are adequate.

(6) (5 points) Need for the project in the area to be served by the applicant;

(7) (5 points) Expected potential for using the results of the project in other projects for similar purposes.

(8) (10 points) The extent to which the proposed activity may be expected to develop new knowledge significant to the purpose of section 602 of the Act.

(9) (5 points) The extent to which problems, questions, or hypotheses to be dealt with are well formulated, and reflect adequate knowledge of other related research;

(10) (5 points) The specificity of the statement of procedures to be followed, including sampling techniques, controls, data to be gathered, and statistical and other analyses to be done; and

(11) (5 points) The adequacy of the proposed teaching, testing, and research methodology.

(b) The Commissioner uses the criteria in this paragraph to evaluate applications for the development of instructional materials. The maximum score for all of the criteria is 65 points.

(1) *Plan of operation.* (7 points)

(i) The Commissioner reviews each application for information that shows the quality of the plan of operation for the project.

(ii) The Commissioner looks for information that shows—

(A) High quality in the design of the project;

(B) An effective plan of management that insures proper and efficient administration of the project;

(C) A clear description of how the objectives of the project relate to the purpose of the program;

(D) The way the applicant plans to use its resources and personnel to achieve each objective; and

(E) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(2) *Quality of key personnel.* (5 points)

(i) The Commissioner reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(ii) The Commissioner looks for information that shows—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (b)(2)(ii)(A) and (B) of this section plans to commit to the project; and

(D) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourage applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(iii) To determine the qualifications of a person, the Commissioner considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(3) *Budget and cost effectiveness.* (5 points)

(i) The Commissioner reviews each application for information that shows that the project has an adequate budget and is cost effective.

(ii) The Commissioner looks for information that shows—

(A) The budget for the project is adequate to support the project activities; and

(B) Costs are reasonable in relation to the objectives of the project.

(4) *Evaluation plan.* (5 points)

(i) The Commissioner reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference—45 CFR 100a.590 Evaluation by the grantee.

(ii) The Commissioner looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(5) *Adequacy of resources.* (3 points)

(i) The Commissioner reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(ii) The Commissioner looks for information that shows—

(A) The facilities that the applicant plans to use are adequate; and

(B) The equipment and supplies that the applicant plans to use are adequate.

(6) (5 points) Need for the project in the area to be served by the applicant;

(7) (5 points) Likelihood of achieving results;

(8) (5 points) Expected potential for using the results of the project in other projects for similar purposes.

(9) (5 points) The extent to which the proposed work may contribute significantly to strengthening international studies programs of educational institutions.

(10) (5 points) The extent to which all existing related materials are cited or accounted for, including a critical commentary on their adequacy, in the justification of the proposal.

(11) (5 points) The degree of specificity concerning the final form of the projected instructional materials.

(12) (5 points) The degree to which the proposed contents and final form of the materials reflect an empirical knowledge of the organization for instruction and academic practices of those American institutions in which they will ultimately be used; and

(13) (5 points) The extent to which provision has been made for pretesting the materials in the classroom and for revision before publication.

(20 U.S.C. 512)

PART 146a—CITIZEN EDUCATION FOR CULTURAL UNDERSTANDING PROGRAM

25. Section 146a.7 is revised to read as follows:

§ 146a.7 Selection criteria.

(a) The Commissioner uses the criteria in this section to evaluate applications. The criteria are not weighted.

(1) *Plan of operation.* (i) The Commissioner reviews each application for information that shows the quality of the plan of operation for the project.

(ii) The Commissioner looks for information that shows—

(A) High quality in the design of the project;

(B) An effective plan of management that insures proper and efficient administration of the project;

(C) A clear description of how the objectives of the project relate to the purpose of the program;

(D) The way the applicant plans to use its resources personnel to achieve each objective; and

(E) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(2) Women;
(3) Handicapped persons; and
(4) The elderly.

(2) *Quality of key personnel.* (i) The Commissioner reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(ii) The Commissioner looks for information that shows—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (a)(2)(ii)(A) and (B) of this section plans to commit to the project; and

(D) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(1) Members of racial or ethnic minority groups;
(2) Women;
(3) Handicapped persons; and
(4) The elderly.

(iii) To determine the qualifications of a person, the Commissioner considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(3) *Budget and cost effectiveness.* (i) The Commissioner reviews each application for information that shows that the project has an adequate budget and is cost effective.

(ii) The Commissioner looks for information that shows—

(A) The budget for the project is adequate to support the project activities; and

(B) Costs are reasonable in relation to the objectives of the project.

(4) *Evaluation plan.* (i) The Commissioner reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—45 CFR 100a.590 Evaluation by the grantee.

(ii) The Commissioner looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(5) *Adequacy of resources.* (i) The Commissioner reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(ii) The Commissioner looks for information that shows—

(A) The facilities that the applicant plans to use are adequate; and

(B) The equipment and supplies that the applicant plans to use are adequate.

(6) The extent to which appropriate segments of the local community were consulted on the development of the application;

(7) The degree to which the proposed project or program provides specifically for cooperation with appropriate segments of the local community; and

(8) The commitment of the agency or organization to the establishment and operation of the program as evidenced by maximum use of non-Federal resources (including financial support). Non-Federal resources include components of the proposed program, such as teaching personnel committed to and available for the project for whom Federal reimbursement is not requested, existing library resources and facilities, volunteer services, and other ongoing activities of the applicant agency or organization which demonstrate a commitment to the additional activities proposed for Federal funding.

(b) In addition to considering the criteria applied to each application individually, the Commissioner seeks to achieve a wide distribution of awards throughout the United States.

(20 U.S.C. 512a)

PART 148—HIGHER EDUCATION PROGRAMS IN MODERN FOREIGN LANGUAGE TRAINING AND AREA STUDIES

26. Section 148.14 is revised to read as follows:

§ 148.14 Selection criteria.

Doctoral dissertation research proposals will be evaluated by the Commissioner in accordance with the criteria contained in this section and in § 148.1(c) as well as program priorities as annually determined and announced by the Commissioner. The criteria are noit weighted. Preference will be given to modern foreign languages where adequate instruction has not been widely available in the United States, and for which there exists a shortage of trained personnel.

(a) *Plan of operation.* (1) The Commissioner reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Commissioner looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;
(B) Women;
(C) Handicapped persons; and
(D) The elderly.

(b) *Quality of key personnel.* (1) The Commissioner reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Commissioner looks for information that shows—

(i) The qualifications of the project director (if one is to be used).

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;
(B) Women;
(C) Handicapped persons; and
(D) The elderly.

(3) To determine the qualifications of a person, the Commissioner considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (1) The Commissioner reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Commissioner looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (1) The Commissioner reviews each application

for information that shows the quality of the evaluation plan for the project.

Cross-reference.—45 CFR 100a.590 Evaluation by the grantee.

(2) The Commissioner looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (1) The Commissioner reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Commissioner looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(22 U.S.C. 2452(b)(6), 2456(a)(2))

27. Section 148.24 is revised to read as follows:

§ 148.24 Selection criteria.

The Commissioner uses the criteria in this section and in § 148.1(c) to evaluate applications under this subpart. The criteria are not weighted.

(a) *Plan of operation.* (1) The Commissioner reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Commissioner looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Member of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (1) The Commissioner reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Commissioner looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its non-discriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Commissioner considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (1) The Commissioner reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Commissioner looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (1) The Commissioner reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—45 CFR 100a.590 Evaluation by the grantee.

(2) The Commissioner looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (1) The Commissioner reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Commissioner looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) Relevance of the project to the institution's educational goals and to its plans for developing programs in modern foreign languages and area studies;

(g) The project's potential impact on modern foreign languages and area studies in American education;

(h) Relevance of the project to contemporary issues and problems significantly related to the national interest;

(i) Scholarly qualifications of the candidate and his previous opportunities for research abroad; and

(j) The extent to which direct experience abroad is necessary to conduct the project and the effectiveness with which host country resources would be utilized.

(22 U.S.C. 2452(b)(6), 2456(a)(2))

28. Section 148.34 is revised to read as follows:

§ 148.34 Selection criteria.

The Commissioner uses the criteria in this section and in § 148.1(c) to evaluate applications under this Subpart. The criteria are not weighted.

(a) *Plan of operation.* (1) The Commissioner reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Commissioner looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (1) The Commissioner reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Commission looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its non-discriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Commissioner considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (1) The Commissioner reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Commissioner looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (1) The Commissioner reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—45 CFR 100a.590 Evaluation by the grantee.

(2) The Commissioner looks for information that shows methods of evaluation that are appropriate for the project and to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (1) The Commissioner reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Commissioner looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) The potential impact of the project on the development of modern foreign languages and area studies programs in American education;

(g) The project's relevance to the applicant institution's educational goals and its relationship to the institution's program development in modern foreign languages and area studies;

(h) The extent to which direct experience abroad is necessary to achieve the project's objectives and the effectiveness with which relevant host country resources would be utilized; and

(i) Program priorities as annually determined and announced by the Commissioner.

29. Section 148.43 is revised to read as follows:

§ 148.43 Selection criteria.

The Commissioner uses the criteria in this section to evaluate applications under this subpart. The criteria are not weighted.

(a) *Plan of operation.* (1) The Commissioner reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Commissioner looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objective of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups.

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (1) The Commissioner reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Commissioner looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) to determine the qualifications of a person, the Commissioner considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (1) The Commissioner reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Commissioner looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (1) The Commissioner reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—45 CFR 100a.590 Evaluation by the grantee.

(2) The Commissioner looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (1) The Commissioner reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Commissioner looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) Potential impact on the applicant institution's plans for developing its modern foreign language and area studies programs;

(g) Potential effective use of the results of the consultant's work following the completion of the project;

(h) Appropriateness of the consultant's duties and the allocation of time among the duties;

(i) Number of faculty, students, and members of the relevant community who are expected to be affected by the consultant's activities;

(j) Likelihood that educational institutions other than the grantee will share the consultant's services and the extent to which such institutions have participated in helping define the nature of these services;

(k) Adequacy of the arrangements made for coordinating the consultant's work under the supervision of a project director; and

(l) If the proposal is for curriculum development in area studies, focus on area studies in which the applicant

institution lacks adequate instructional materials and trained personnel.

(22 U.S.C. 2452(b)(6))

PART 154—EDUCATIONAL OPPORTUNITY CENTERS

30. Section 154.6 is revised to read as follows:

§ 154.6 Selection criteria.

The Commissioner uses the criteria in this paragraph to evaluate applications. The criteria are not weighted.

(a) *Plan of operation.* (1) The Commissioner reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Commissioner looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (1) The Commissioner reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Commissioner looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraph (b)(2)(i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Commissioner considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (1) The Commissioner reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Commissioner looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (1) The Commissioner reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—45 CFR 100a.590 Evaluation by the grantee.

(2) The Commissioner looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (1) The Commissioner reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Commissioner looks for information that shows—

(i) The facilities that the applicant plans to use to serve the low-income families in the target area;

(ii) The equipment and supplies that the applicant plans to use are adequate.

The degree to which services are needed to enchance access to postsecondary education, as indicated by—

(i) The number of secondary and postsecondary students and other persons residing in the area;

(ii) The number of low-income families in the target area;

(iii) The historical rate of participation in postsecondary education by residents in the area; and

(iv) The number of persons to be served by the Center;

(g) The extent to which the applicant has successfully operated a Center comparable or identical to those authorized under this part. If that Center was not funded under the Educational Opportunity Centers Program, the applicant shall provide a description of the that Center, including the number of low-income persons served and the kinds of services offered, the number of persons enrolled in and graduated from postsecondary institutions as a result of services offered, and the percentage of increase in postsecondary enrollment and graduation by residents of the area served.

(h) The comprehensiveness of the applicant's plan for carrying out the activities under § 154.7 and the extent to which these activities will result in increased enrollment and retention in and graduation of low-income, educationally disadvantaged persons from postsecondary institutions.

(i) The extent to which representatives from the community, secondary schools, and postsecondary schools have participated in the formulation of the proposal and will participate in the operation of the Center;

(j) The extent to which all members of a consortia will make resources available and participate in the activities of the Center to reach the goals and objectives of the proposed work program;

(k) The extent of the Center's relationship to Talent Search, Upward Bound, and Special Services for Disadvantaged Students projects in the area and to such other similar programs and services, including those for the physically handicapped, in terms of—

(i) Coordinating services to individuals who participate in more than one such program;

(ii) Providing services not otherwise available from Talent Search, Upward Bound, and Special Services projects and other similar programs; and

(iii) Avoiding duplication of services;

(l) The degree to which the Center will draw upon and coordinate the resources and staff efforts of institutions of higher education and postsecondary education in admitting low-income, educationally disadvantaged persons.

(m) Geographic considerations. The Commissioner will award grants or contracts to insure that major concentrations of low-income persons, in both urban and rural areas, will be represented among the areas served by Centers.

(20 U.S.C. 1070d-1)

PART 155—UPWARD BOUND PROGRAM

31. Section 155.8 is revised to read as follows:

§ 155.8 Selection criteria.

(a) The Commissioner uses the criteria in this paragraph to evaluate applications for new awards. The maximum score for all of the criteria is 100 points.

(1) *Plan of operation.* (10 points)

(i) The Commissioner reviews each application for information that shows the quality of the plan of operation for the project.

(ii) The Commissioner looks for information that shows—

(A) High quality in the design of the project;

(B) An effective plan of management that insures proper and efficient administration of the project;

(C) A clear description of how the objectives of the project relate to the purpose of the program;

(D) The way the applicant plans to use its resources and personnel to achieve each objective; and

(E) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(2) *Quality of key personnel.* (18 points)

(i) The Commissioner reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(ii) The Commissioner looks for information that shows—

(A) The qualifications for the project director (if one is to be used);

(B) The qualifications of each of other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (a)(2)(ii)(A) and (B) of this section plans to commit to the project; and

(D) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(iii) To determine the qualifications of a person, the Commissioner considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(3) *Budget and cost effectiveness.* (5 points)

(i) The Commissioner reviews each application for information that shows that the project has an adequate budget and is cost effective.

(ii) The Commissioner looks for information that show—

(A) The budget for the project is adequate to support the project activities; and

(B) Costs are reasonable in relation to the objectives of the project.

(4) *Evaluation plan.* (5 points)

(i) The Commissioner reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—45 CFR 100a.590 Evaluation by the grantee.

(ii) The Commissioner looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(5) *Adequacy of resources.* (9 points)

(i) The Commissioner reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(ii) The Commissioner looks for information that shows—

(A) The facilities that the applicant plans to use are adequate; and

(B) The equipment and supplies that the applicant plans to use are adequate.

(6) *Need.* (33 points) The number of youths who would be eligible to participate under this part who will be enrolled in the target schools or reside in the area to be served during the project period.

(7) *Design.* (20 points) (i) The comprehensiveness of the applicant's plan for identifying and selecting eligible participants, assessing and documenting their educational need and potential for postsecondary education through the use of standardized measurement instruments, and such other evaluative methods the applicant may choose to use, providing career and academic guidance and counseling, preparing and motivating project participants for admission to postsecondary institutions, and assisting participants in applying for admission to postsecondary institutions which are appropriate for such participants' abilities and ambitions; and

(ii) The extent to which the project will generate academic skills and motivation that will enable the participants to gain admission to postsecondary institutions and assist participants to attain a minimum of one year's growth, as measured by standardized measurement instruments stipulated in the application, in those academic skills such as reading, writing, mathematics and science which are essential for postsecondary education and in which participants are deficient.

(8) In selecting applications for funding, the Commissioner will consider the need for a project in the area that the applicant proposes to serve as compared to the need of the total target population to be served.

(9) Except for veterans projects, preference will be given to those applicants for new awards that proposed to carry out a summer residential component.

(10) Special consideration will be given to those applicants for new awards that propose to serve veterans if the applicant will serve an area in which the needs of eligible veterans for the services provided under this part cannot adequately be met without the project.

(11) National demonstration awards. The Commissioner will select a limited number of applications to be funded as Upward Bound national demonstration projects on the basis of the criteria set forth in paragraph (a)(9) of this section and the following additional criteria:

(i) Whether the proposed project is national or inter-regional in scope, or presents a clearly new or experimental technique or design for the provision of Upward Bound services to eligible participants;

(ii) Whether the proposed project duplicates or competes with existing regional or national programs, or consolidates existing regional or inter-regional educational activities under the aegis of a single agency or institution;

(iii) Whether, with regard to proposed projects presenting a new or experimental technique or design, the proposed activities and results can be readily replicated and utilized by other educational programs concerned with the provision of services for similar youths;

(iv) Whether the proposed project will provide services not readily available on a local or regional basis for such youths; and

(v) Whether the proposed project will provide disadvantaged students a variety of educational opportunities and options for postsecondary education.

(20 U.S.C. 1070d–1)

PART 157—SPECIAL SERVICES FOR DISADVANTAGED STUDENTS PROGRAMS

32. Section 157.6 is revised to read as follows:

§ 157.6 Selection criteria.

(a) The Commissioner uses the criteria in this section to evaluate applications for new awards. The maximum score for all of the criteria is 100 points.

(1) *Plan of operation.* (10 points)

(i) The Commissioner reviews each application for information that shows the quality of the plan of operation for this project.

(ii) The Commissioner looks for information that shows—

(A) High quality in the design of the project;

(B) An effective plan of management that insures proper and efficient administration of the project;

(C) A clear description of how the objectives of the project relate to the purpose of the program;

(D) The way the applicant plans to use its resources and personnel to achieve each objective; and

(E) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(2) *Quality of key personnel.* (7 points)

(i) The Commissioner reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(ii) The Commissioner looks for information that shows—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (a)(2)(ii) (A) and (B) of this section plans to commit to the project; and

(D) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(iii) To determine the qualifications of a person, the Commissioner considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(3) *Budget and cost effectiveness.* (5 points)

(i) The Commissioner reviews each application for information that shows that the project has an adequate budget and is cost effective.

(ii) The Commissioner looks for information that shows—

(A) The budget for the project is adequate to support the project activities; and

(B) Costs are reasonable in relation to the objectives of the project.

(4) *Evaluation plan.* (9 points)

(i) The Commissioner reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—45 CFR 100a.590 Evaluation by the grantee.

(ii) The Commissioner looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(5) *Adequacy of resources.* (3 points)

(i) The Commissioner reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(ii) The Commissioner looks for information that shows—

(A) The facilities that the applicant plans to use are adequate; and

(B) The equipment and supplies that the applicant plans to use are adequate.

(6) *Need.* (33 points) (i) The extent to which the institution has made available educational opportunites to students of deprived educational, cultural, or economic backgrounds, and to students of limited English-speaking ability, or with physical handicaps, or who are disadvantaged because of severe rural isolation.

(7) *Project plan.* (12 points) The comprehensiveness of the applicant's plan for selecting students to be served by the project, conducting an assessment of supportive services needed by the students, and providing the services.

(8) *Resources and organization.* (21 points)

(i) The degree to which student financial assistance at the applicant institution will be used to meet the needs of the students who will be participating in the project;

(ii) The degree to which administrative and academic policies have as their purpose the maximization of a student's chances for graduating from the host institution;

(iii) The extent to which the project director will be consulted on those administrative and academic policies that affect the participant's chances of completing an educational program at the institution; and

(iv) The extent to which the applicant proposes to orient the faculty and staff of the institution to the goals and objectives of the Special Services Program and to utilize institutional resources available to the project.

(v) In selecting applications for funding, the Commissioner will consider the need for the project in the area the applicant proposes to serve as compared to the need of the total target population to be served.

(b) *National demonstration awards.* The Commissioner will select a limited number of applications to be funded as Special Services national demonstration projects on the basis of the criteria set forth in paragraph (a) of this section and the following additional criteria:

(1) Whether the proposed project is national or inter-regional in scope, or presents a clearly new or experimental technique or design for the provision of special services for students from deprived educational, cultural, or economic backgrounds, or for students with physical handicaps or for students of limited English-speaking ability enrolled at the institution which is the beneficiary of the award;

(2) Whether the proposed project duplicates or competes with existing regional or national programs or consolidates existing regional or inter-regional educational activities under the aegis of a single agency or institution;

(3) Whether, with regard to proposed projects presenting a new or experimental technique or design, the applicant's proposed activities and expected results can be readily replicated and utilized by other educational programs concerned with the provision of special supportive services for similar students;

(4) Whether the proposed project will provide services not readily available on a local or regional basis for participants; and

(5) Whether the proposed proposed will provide disadvantaged students a variety of educational opportunities and career options.

(20 U.S.C. 1070d–1)

PART 158—FOLLOW THROUGH PROGRAM

33. Section 158.15 is revised to read as follows:

§ 158.15 Selection criteria for refunding of projects.

The Commissioner uses the criteria in this section to determine whether an applicant has satisfactorily operated a project funded in the previous year under the Follow Through Program. Each of the criteria is rated on the

following scale: unsatisfactory, satisfactory, above average, outstanding.

(a) *Plan of operation.* (1) The Commissioner reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Commissioner looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the application will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(vi) For grants made after October 1, 1980, a clear description of how the applicant will provide an opportunity for participation of students enrolled in nonprofit private schools.

(b) *Quality of key personnel.* (1) The Commissioner reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Commissioner looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraph (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Commissioner considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (1) The Commissioner reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Commissioner looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (1) The Commissioner reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—45 CFR 100a.590 Evaluation by the grantee.

(2) The commissioner looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (1) The Commissioner reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Commissioner looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) The proportion of children enrolled in the schools of the project who are low-income according to the official poverty line as defined by the Office of Mangement and Budget.

(g) The proportion of children enrolled in the schools of the project who are graduates of Head Start or similar preschool programs as required by § 158.12(a).

(h) The provision of parental and community involvement as required by § 158.26(b).

(i) The participation of Follow Through parents in the development and operation of the project as required by § 158.19 (a) and (d).

(j) The role of the Policy Advisory Committee in recommending the filling of staff positions as required by § 158.19(d) (3) and (4);

(k) The extent to which the membership of the Policy Advisory Committee is composed of low-income parents elected by such parents as required by § 158.19(b);

(l) The extent to which the Policy Advisory Committee participates in the decision-making process in respect to important aspects of the project in accordance with §158.19(d);

(m) The extent to which priority is given to low-income parents in the employment of nonprofessionals and paraprofessionals as required by § 158.20;

(n) If appropriate, the extent to which the supplementary training program is serving nonprofessional and paraprofessional staff of the project in accordance with § 158.26(h)(3).

(o) The role of the Career Development Committee as required by § 158.19(d)(9).

(p) The provision for staff training as required by § 158.26(g);

(q) The extent to which the instructional component is implemented as required by § 158.26(a).

(r) The provision and coordination of comprehensive services as required by §§ 158.26 and 158.26(b):

(1) Nutrition.

(2) Medical and dental services.

(3) Social services.

(4) Psychological services.

(5) Career development.

(s) The use or the coordination, or both, of other resources and programs with the project in accordance with § 158.25(b).

(t) The extent to which the evaluations conducted to date indicate program effectiveness according to criteria such as those defined by § 158.24(b).

(Economic Opportunity Act, Title V, Secs. 551(a) (1), (3), 554(a) (Pub. L. 93-644 Sec. 8(a))

34. The title and paragraph (b) of § 158.42 are revised to read as follows:

§ 158.42 Funding and selection criteria for grants or contracts.

* * * * *

(b) *Section criteria.* The Commissioner uses the criteria in this paragraph (b) to evaluate applications for grants and proposals for contracts under this subpart. The criteria are not weighted, but are each rated on the following scale: unsatisfactory, satisfactory, above average, outstanding.

(1) *Plan of operation.* (i) The Commissioner reviews each application for information that shows the quality of the plan of operation for the project.

(ii) The Commissioner looks for information that shows—

(A) High quality in the design of the project;

(B) An effective plan of management that insures proper and efficient administration of the project;

(C) A clear description of how the objectives of the project relate to the purpose of the program;

(D) The way the applicant plans to use its resources and personnel to achieve each objective; and

(E) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(2) *Quality of key personnel.* (i) The Commissioner reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(ii) The Commissioner looks for information that shows—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (b)(2)(ii) (A) and (B) of this section plans to commit to the project; and

(D) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(iii) To determine the qualifications of persons, the Commissioner considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(3) *Budget and cost effectiveness.* (i) The Commissioner reviews each application for information that shows that the project has an adequate budget and is cost effective.

(ii) The Commissioner looks for information that shows—

(A) The budget for the project is adequate to support the project activities; and

(B) Costs are reasonable in relation to the objectives of the project.

(4) *Evaluation plan.* (i) The Commissioner reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—45 CFR 100a.590 Evaluation by the grantee.

(ii) The Commissioner looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(5) *Adequacy of resources.* (i) The Commissioner reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(ii) The Commissioner looks for information that shows—

(A) The facilities that the applicant plans to use are adequate; and

(B) The equipment and supplies that the applicant plans to use are adequate.

(6) *Programmatic.* (i) The extent to which the applicant has shown or will show familiarity with the Follow Through program and the projects in its State through site visits and other means;

(ii) The extent to which the applicant will promote coordination of Follow Through with other State and local programs having similar objectives;

(iii) The extent to which the applicant will assist local projects in identifying and making the maximum use of available public and private resources which can contribute to the development of comprehensive projects;

(iv) The extent to which the applicant will assist local projects in improving parent-school community relationships;

(v) The extent to which the applicant will assist local projects in evaluating project activities and disseminating information regarding project activities and their evaluation; and

(iv) The extent to which the applicant will assist local projects with staff training and development programs.

(7) *Management.* The extent to which the applicant will seek information from the local project sites to meet their project needs for technical assistance.

(Economic Opportunity Act, Title V, Sec. 553(a)(3) Pub. L. 93–644 Sec. 8(a))

35. Section 158.52 is revised to read as follows:

§ 158.52 Selection criteria.

The Commissioner provides financial assistance under this subpart only to those applicants who sponsor educational approaches currently being implemented in the Follow Through program. The Commissioner uses the criteria in this section to determine whether an applicant has satisfactorily operated a project funded in the previous year under the Follow Through program. Each of the criteria is rated on the following scale: unsatisfactory, satisfactory, above average, outstanding:

(a) *Plan of operation.* (1) The Commissioner reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Commissioner looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (1) The Commissioner reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Commissioner looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraph (b)(2)(i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups:;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Commissioner considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (1) The Commissioner reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Commissioner looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (1) The Commissioner reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—45 CFR 100a.590 Evaluation by the grantee.

(2) The Commissioner looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (1) The Commissioner reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Commissioner looks for information that shows—

(i) The facilities that the applicant plans to use are adquate; and

(ii) The equipment and supplies that the applicant plans to use are adequate;

(f) The extent to which the evaluations conducted to date indicate program effectiveness according to criteria in § 158.24(b).

(g) The extent to which parents have been and will be involved in sponsor activities.

(h) The extent to which the sponsor has provided and will provide for the training of—

(1) Administrators;

(2) Teachers;

(3) Teacher aides and other paraprofessionals;

(4) Parents, and

(5) Others.

(Economic Opportunity Act, Title V, Sec. 553(a)(1) (Pub. L. 93-644 Sec. 8(a)))

PART 159—TALENT SEARCH PROGRAM

36. Section 159.7 is revised to read as follows:

§ 159.7 Selection criteria.

(a) The Commissioner uses the criteria in this paragraph to evaluate applications for new awards. The maximum score for all of the criteria is 100 points.

(1) *Plan of operation.* (10 points)

(i) The Commissioner reviews each application for information that shows the quality of the plan of operation for the project.

(ii) The Commissioner looks for information that shows—

(A) High quality in the design of the project;

(B) An effective plan of management that insures proper and efficient administration of the project;

(C) A clear description of how the objectives of the project relate to the purpose of the program;

(D) The way the applicant plans to use its resources and personnel to achieve each objective; and

(E) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(2) *Quality of key personnel.* (7 points)

(i) The Commissioner reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(ii) The Commissioner looks for information that shows—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (a)(2)(ii)(A) and (B) of this section plans to commit to the project; and

(D) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(iii) To determine the qualifications of a person, the Commissioner considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(3) *Budget and cost effectiveness.* (5 points)

(i) The Commissioner reviews each application for information that shows that the project has an adequate budget and is cost effective.

(ii) The Commissioner looks for information that shows—

(A) The budget for the project is adequate to support the project activities; and

(B) Costs are reasonable in relation to the objectives of the project.

(4) *Evaluation Plan.* (5 points)

(i) The Commissioner reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—45 CFR 100a.590 Evaluation by the grantee.

(ii) The Commissioner looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(5) *Adequacy of resources.* (3 points)

(i) The Commissioner reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(ii) The Commissioner looks for information that shows—

(A) The facilities that the applicant plans to use are adequate; and

(B) The equipment and supplies that the applicant plans to use are adequate.

(6) *Need.* (33 points) (i) The extent to which the target area of the project is characterized by having a percent of youths from low-income families, residing or attending school in the area, that exceeds the minimally acceptable 25 percent, or exceeds 15 percent for those proposing to serve sparsely populated or geographically isolated areas; and

(ii) The number of youths who are eligible to be served by a project who reside or attend schools in the target area.

(7) *Design.* (16 points) (i) the extent to which the project will, in the target area, increase the rate of secondary school completion and postsecondary admissions, decrease the rate of secondary school dropouts, and increase the number of secondary and postsecondary dropouts who reenter secondary and postsecondary educational programs; and

(ii) The comprehensiveness of the applicant's plan for—

(A) Identifying and selecting eligible participants and assessing and documenting their potential for postsecondary education;

(B) Providing career and academic guidance and counseling;

(C) Disseminating information on student financial aid to the target population;

(D) Assisting youths in gaining admission or readmission to secondary schools and a variety of postsecondary institutions which have adequate supportive services, if needed by the participants;

(E) Assisting youths enrolling in postsecondary institutions in obtaining student financial aid; and

(F) Determining whether the participants actually enrolled in secondary programs or postsecondary

institutions received adequate financial aid.

(8) *Resources and organization.* (21 points)

(i) The extent to which the applicant has provided for the orientation of secondary and postsecondary schools in the target area to the goals and objectives of the Talent Search Program and has received written commitments by community and other relevant organizations for the utilization of community and other resources to supplement authorized activities.

(ii) *Population to be served.* In selecting applications for funding, the Commissioner will consider the need for the project in the area the applicant proposes to serve as compared to the need of the total target population to be served.

(iii) *National demonstration projects.* The Commissioner will select a limited number of applications to be funded as Talent Search national demonstration projects on the basis of the criteria in paragraph (a)(8)(i) of this section and the following additional criteria:

(A) Whether the proposed project is national or inter-regional in scope or presents a clearly new or experimental technique or design for the provision of Talent Search services to eligible participants.

(B) Whether the proposed project duplicates or competes with existing regional or national programs, or consolidates existing regional or inter-regional educational activities under the aegis of a single agency or institution.

(C) Whether, with regard to proposed projects presenting a new or experimental technique or design, the proposed activities and results can be readily replicated and utilized by other educational programs concerned with the provision of services to similar youths.

(D) Whether the proposed project will provide services not readily available on a local or regional basis to such youths.

(E) Whether the proposed project will provide disadvantaged students a variety of educational opportunities and options for postsecondary education.

(20 U.S.C. 1070d-1).

PART 164—CAPACITY BUILDING FOR STATISTICAL ACTIVITIES IN STATE EDUCATIONAL AGENCIES

37. Section 164.10 is revised to read as follows:

§ 164.10 Selection criteria.

The Administrator uses the criteria in this section to evaluate applications for new grants. The maximum score for all of the criteria is 100 points.

(a) *Plan of operation.* (18 points)

(1) The Commissioner reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Commissioner looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (14 points)

(1) The Commissioner reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Commissioner looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Commissioner considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (9 points)

(1) The Commissioner reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Commissioner looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (5 points)

(1) The Commissioner reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—45 CFR 100a.590 Evaluation by the grantee.

(2) The Commissioner looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (3 points)

(1) The Commissioner reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Commissioner looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Significance of project.* (37 points).

The significance of the project in improving the long-term statistical capability of the State agency, as measured by a reduction of data burden; improvement in the timeliness of data reporting; improvement in the quality, comparability, or utility of data; increase in educational agencies, institutions of higher education or other agencies of the State; or similar statistical objectives.

(g) *Commitment.* (14 points) The adequacy of the educational agency's commitment and arrangements made to ensure the long-term effect of the proposed activities after the expiration of Federal funds.

(20 U.S.C. 1221-1(b)(3)6(e))

Part 169—Strengthening Developing Institutions Programs

38. Section 169.52 is revised to read as follows:

§ 169.52 Selection criteria.

The Commissioner uses the following criteria to select applications for new grants:

(a) *General criteria.* An applicant may receive up to 50 points for the general selection criteria in this paragraph as follows:

(1) *Plan of operation.* (i) The Commissioner reviews each application for information that shows the quality of the plan of operation for the project.

(ii) The Commissioner looks for information that shows—

(A) High quality in the design of the project;

(B) An effective plan of management that insures proper and efficient administration of the project;

(C) A clear description of how the objectives of the project relate to the purpose of the program;

(D) The way the applicant plans to use its resources and personnel to achieve each objective; and

(E) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly. (17 points)

(2) *Quality of key personnel.* (i) The Commissioner reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(ii) The Commissioner looks for information that shows—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (a)(2)(ii) (A) and (B) of this section plans to commit to the project; and

(D) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as–

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(iii) To determine the qualifications of a person, the Commissioner considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides. (7 points)

(3) *Budget and cost effectiveness.* (i) The Commissioner reviews each application for information that shows that the project has an adequate budget and is cost effective.

(ii) The Commissioner looks for information that shows—

(A) The budget for the project is adequate to support the project activities; and

(B) Costs are reasonable in relation to the objectives of the project. (14 points)

(4) *Evaluation plan.* (i) The Commissioner reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—45 CFR 100a.590 Evaluation by the grantee.

(ii) The Commissioner looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable. (9 points)

(5) *Adequacy of resources.*

(i) The Commissioner reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(ii) The Commissioner looks for information that shows—

(A) The facilities that the applicant plans to use are adequate; and

(B) The equipment and supplies that the applicant plans to use are adequate. (3 points)

(b) *Program criteria.* An applicant may receive up to 50 points under the following criteria:

(1) The extent to which the applicant's mission and goals statement reflects the needs of its constituents. (14 points)

(2) The extent to which the size, scope, and duration of the proposed activities will contribute to the stated goals. (22 points)

(3) The extent to which any proposed cooperative arrangements will help achieve project objectives. (9 points)

(4) The extent to which a plan has been developed to ensure continuation of the proposed activities after the grant ends. (5 points)

(c) The Commissioner considers for selection only those applications that receive a rating of 50 or more points.

(20 U.S.C. 1051, 1054)

PART 172—TEACHERS CORPS

39. The title of Subpart F and § 172.150 are revised to read as follows:

Subpart F—Selection Criteria

§ 172.150 General selection criteria.

(a) The Commissioner uses the criteria in §§ 172.151–172.154 and the criteria in this section to evaluate applications for new grants. The maximum score for all of the criteria is 100 points.

(b) An applicant may receive up to 30 points under the general criteria in this section, as follows:

(1) *Plan of operation.* (i) The Commissioner reviews each application for information that shows the quality of the plan of operation for the project.

(ii) The Commissioner looks for information that shows—

(A) High quality in the design of the project;

(B) An effective plan of management that insures proper and efficient administration of the project;

(C) A clear description of how the objectives of the project relate to the purpose of the program;

(D) The way the applicant plans to use its resources and personnel to achieve each objective; and

(E) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly. (10 points)

(2) *Quality of key personnel.* (i) The Commissioner reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(ii) The Commissioner looks for information that shows—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (b)(2) (ii)(A) and (B) of this section plans to commit to the project; and

(D) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(iii) To determine the qualifications of a person, the Commissioner considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides. (7 points)

(3) *Budget and cost effectiveness.* (i) The Commissioner reviews each application for information that shows that the project has an adequate budget and is cost effective.

((ii) The Commissioner looks for information that shows—

(A) The budget for the project is adequate to support the project activities; and

(B) Costs are reasonable in relation to the objectives of the project. (5 points)

(4) *Evaluation plan.* (i) The Commissioner reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—45 CFR 100a.590 Evaluation by the grantee.

(ii) The Commissioner looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable. (5 points)

(5) *Adequacy of resources.* (i) The Commissioner reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(ii) The Commissioner looks for information that shows—

(A) The facilities that the applicant plans to use are adequate; and

(B) The equipment and supplies that the applicant plans to use are adequate. (3 points)

(20 U.S.C. 1103(g))

40. Section 172.151 is revised to read as follows:

§ 172.151 School learning climate criterion.

(16 points)

In evaluating an application the Commissioner considers the extent to which—

(a) The objectives developed under § 172.62 (school objectives) (improved school climate) are likely to achieve the outcome in § 172.60(a) (8 points); and

(b) The project activities are likely to accomplish the objectives developed under § 172.62 (8 points).

(20 U.S.C. 1103(g))

41. Section 172.152 is revised to read as follows:

§ 172.152 Educational personnel development system criterion

(27 points).

In evaluating an application, the Commissioner considers the extent to which—

(a) The objectives developed under § 172.63 (educational personnel development) are likely to achieve the outcome in § 172.60(b) (improved educational personnel development system) (9 points);

(b) The project training activities are likely to accomplish the objectives developed under § 172.63(b) (Improved educational personnel development system) (9 points); and

(c) The project activities are likely to accomplish the objectives developed under § 172.63 (a) and (c). (9 points)

(20 U.S.C. 1103(g))

42. Section 172.153 is revised to read as follows:

§ 172.153 Institutionalization criterion

(15 points).

In evaluating an application, the Commissioner considers the extent to which—

(a) The objectives developed under § 172.64 (institutionalization) are likely to achieve the outcome in § 172.60(c) (continuation of educational improvements) (7 points); and

(b) The project activities are likely to accomplish the objectives developed under § 172.64 (8 points).

(20 U.S.C. 1103(g))

43. Section 172.154 is revised to read as follows:

§ 172.154 Adaptation of educational improvements criterion

(12 points).

In evaluating an application, the Commissioner considers the extent to which—

(a) The objectives developed under § 172.65 (demonstration and dissemination) are likely to achieve the outcome in § 172.60(d) (adaptation of educational improvements) (6 points); and

(b) The project activities are likely to accomplish the objectives developed under § 172.65 (6 points).

(20 U.S.C. 1103(g))

PART 173—COMMUNITY SERVICE AND CONTINUING EDUCATION PROGRAMS

44. Section 173.45 is revised to read as follows:

§ 173.45 Selection criteria.

The Commissioner uses the criteria in this section to evaluate applications for new grants. The maximum score for all of the criteria is 180 points.

(a) *Plan of operation.* (1) The Commissioner reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Commissioner looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly. (18 points)

(b) *Quality of key personnel.* (1) The Commissioner reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Commissioner looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Commissioner considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides. (13 points)

(c) *Budget and cost effectiveness.* (1) The Commissioner reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Commissioner looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project. (10 points)

(d) *Evaluation of plan.* (1) The Commissioner reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—45 CFR 100a.590 Evaluation by the grantee.

(2) The Commissioner looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable. (18 points)

(e) *Adequacy of resources.* (1) The Commissioner reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Commissioner looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate. (10 points)

(f) Whether the proposed activity complements and does not duplicate current demonstrations or programs of experimentation in the field of community service and continuing education, including resource materials sharing (10 points).

(g) The extent to which the proposed activity is responsive to one of the priorities in § 173.42 (19 points).

(h) The potential replicability or adaptability of the project by other institutions of higher education (19 points).

(i) The sufficiency of size, scope, and duration of the project so as to secure productive results (10 points).

(j) The soundness of the proposed plan of operation, including the extent to which—

(1) Where appropriate, provision is made for satisfactory inservice training connected with project services (5 points); and

(2) Provision is made for disseminating the results of the project and for making materials, techniques, and other products available to the general public and specifically to those concerned with the area of education with which the project is itself concerned (19 points).

(k) The degree to which the project proposes to employ, or will result in the development of new approaches, methods, and materials of value in increasing the effectiveness of community service and continuing education programs, including resource materials sharing programs (19 points).

(l) The extent to which the project is coordinated with related Federal, State, or institutional programs in order to promote a comprehensive approach to the solution of national and regional problems of technological and social change, and environmental pollution (10 points).

(20 U.S.C. 1005a; H. (Conf.) Rept. No. 94-1701 at 178 (1976); S. Rept. No. 92-346 at 10 (1971))

PART 179—GRADUATE AND PROFESSIONAL STUDY FELLOWSHIPS AND INSTITUTIONS GRANTS

45. Section 179.26 is revised to read as follows:

§ 179.26 Selection criteria.

(a) The Commissioner uses the criteria in this section to evaluate applications for new grants. The maximum score for all of the criteria in paragraph (b) of this section is 87 points.

(b) *Weighted criteria*—(1) *Plan of operation.* (i) The Commissioner reviews each application for information that shows the quality of the plan of operation for the project.

(ii) The Commissioner looks for information that shows—

(A) High quality in the design of the project;

(B) An effective plan of management that insures proper and efficient administration of the project;

(C) A clear description of how the objectives of the project relate to the purpose of the program;

(D) The way the applicant plans to use its resources and personnel to achieve each objective; and

(E) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly. (9 points.)

(2) *Quality of key personnel.* (i) The Commissioner reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(ii) The Commissioner looks for information that shows—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (b)(2)(ii) (A) and (B) of this section plans to commit to the project; and

(D) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(iii) To determine the qualifications of a person, the Commissioner considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides. (12 points)

(3) *Budget and cost effectiveness.* (i) The Commissioner reviews each application for information that shows the project has an adequate budget and is cost effective.

(ii) The Commissioner looks for information that shows—

(A) The budget for the project is adequate to support the project activities; and

(B) Costs are reasonable in relation to the objectives of the project. (9 points)

(4) *Evaluation plan.* (i) The Commissioner reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference—45 CFR 100a.590 Evaluation by the grantee.

(ii) The Commissioner looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable. (4 points)

(5) *Adequacy of resources.* (i) The Commissioner reviews each application for information that shows that the applicant plans to devote adequate resources to the project;

(ii) The Commissioner looks for information that shows—

(A) The facilities that the applicant plans to use are adequate; and

(B) The equipment and supplies that the applicant plans to use are adequate. (3 points)

(6) The project proposes activities which would assist in providing graduate and professional education to persons with varied backgrounds and experiences including, but not limited to, members of minority groups which are underrepresented in colleges and universities and in the academic and professional career fields to which the education leads. (17 points)

(7) The project is consistent with State, regional, or national priorities. (9 points)

(8) The project includes arrangements related to the thrust of the institution's program. These may be arrangements involving undergraduate, professional, or other graduate units within the institution, or arrangements with outside institutions or agencies. (9 points)

(9) The project provides activities which clearly enhance the institution's

program emphasis or are innovative. (5 points)

(10) The overall graduate or professional academic program of the institution is strong enough to assure the success of the project. (10 points)

(c) *Unweighted criterion.* The Commissioner reviews each application to determine the extent to which funding the project would help provide, as far as practicable, a wide distribution of graduate and professional study programs throughout the United States.

(20 U.S.C. 1134(b))

PART 182—COOPERATIVE EDUCATION PROGRAMS

46. Section 182.16 is revised to read as follows:

§ 182.16 Selection criteria.

The Commissioner uses the criteria in this section to evaluate applications for new awards under this subpart. The maximum score for all of the criteria is 120 points.

(a) *Plan of operation.* (1) The Commissioner reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Commissioner looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly. (12 points)

(b) *Quality of key personnel.* (1) The Commissioner reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Commissioner looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly. (12 points)

(3) To determine the qualifications of a person, the Commissioner considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides. (8 points)

(c) *Budget and cost effectiveness.* (1) The Commissioner reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Commissioner looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project. (6 points)

(d) *Evaluation plan.* (1) The Commissioner reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—45 CFR 100a.590 Evaluation by the grantee.

(2) The Commissioner looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable. (12 points)

(e) *Adequacy of resources.* (1) The Commissioner reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Commissioner looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate. (3 points)

(f) The extent to which the applicant shows in its application that—

(1) The applicant will use its own resources to increase the size, scope and quality of its cooperative education program during the period of Federal support (13 points);

(2) The applicant has arranged for employment opportunities which to the extent practicable are related to its students' educational, professional, or occupational objectives (8 points);

(3) The applicant supervises its students during the work experience (4 points);

(4) The applicant makes continuing efforts to promote close interaction between its students' work experiences and academic study (4 points);

(5) The President and first-line administrators of the applicant support the program (8 points); and

(6) The applicant has or will develop a record-keeping system that keeps track of each student's status, attendance periods, and work periods (4 points).

(g) Whether the length of work experience is sufficient to make a significant contribution toward meeting the students' educational, professional, and occupational objectives (8 points).

(h) The extent to which the applicant has involved administrators, faculty, students, employers, and cooperative education specialists in both planning and, if the program is already in existence, carrying out the program (4 points).

(i) Whether the applicant has procedures for making curriculum and calendar changes as necessary to meet the particular needs of students (8 points).

(j) Whether the applicant has a written cooperative education philosophy appropriate to the needs and characteristics of the applicant (4 points).

(k) The extent to which programs in the academic discipline with respect to which the application is made have had a favorable reception by employers (7 points).

(l) The extent to which the applicant demonstrates its intention and ability to continue its cooperative education program after Federal financial assistance ends (7 points).

(20 U.S.C. 1133(a), 1133a(b), 1133a(d))

47. Section 182.32 is revised to read as follows:

§ 182.32 Selection criteria for training projects.

The Commissioner uses the criteria in this section to evaluate applications for new training projects under this subpart. The maximum score for all of the criteria is 100 points.

(a) *Plan of operation.* (1) The Commissioner reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Commissioner looks for information that shows—

(i) High quality in the design of the project;

(ii) An efficient plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly. (10 points)

(b) *Quality of key personnel.* (1) The Commissioner reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Commissioner looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from person who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Commissioner considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides. (7 points)

(c) *Budget and cost effectiveness.* (1) The Commissioner reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Commissioner looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project. (5 points)

(d) *Evaluation plan.* (1) The Commissioner reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—45 CFR 100a.590 Evaluation by the grantee.

(2) The Commissioner looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable. (5 points)

(e) *Adequacy of resources.* (1) The Commissioner reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Commissioner looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate. (3 points)

(f) The extent to which the applicant proposes to address the responsibilities of—

(1) Cooperative education directors at institutions of higher education to modify existing undergraduate teaching practices, academic calendars and curricula in order to administer cooperative education programs more effectively;

(2) Undergraduate guidance counselors to understand the relationship of the work experience to the students' academic program;

(3) Personnel officers of private or public employers to assist in placing and supervising cooperative education students in work situations; or

(4) Community representatives (10 points).

(g) The extent to which the applicant has based its project on its experience in cooperative education or on successful cooperative education programs, or on innovations which have been used successfully in a cooperative education program (15 points).

(h) The extent to which the applicant has clearly defined procedures that give evidence of comprehensive planning (15 points).

(i) The extent to which the proposed project has promise of developing trainees who can apply their expertise in more than one type of cooperative education program; or in more effective articulation between two and four-year institutions; or in improved employer participation in cooperative education programs; or in improved college-community relations affecting cooperative education programs (15 points).

(j) The extent to which the applicant provides evidence of a need for the training in its geographical area or for training of a specialized nature addressed to a nationwide clientele (15 points).

(20 U.S.C. 1133b)

48. Section 182.33 is revised to read as follows:

§ 182.33 Selection criteria for research and demonstration projects.

The Commissioner uses the criteria in this section to evaluate applications for new research and demonstration projects under this subpart. The maximum score for all of the criteria is 105 points.

(a) *Plan of operation.* (1) The Commissioner reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Commissioner looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly. (15 points)

(b) *Quality of key personnel.* (1) The Commissioner reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Commissioner looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Commissioner considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides. (10 points)

(c) *Budget and cost effectiveness.* (1) The Commissioner reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Commissioner looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project. (5 points)

(d) *Evaluation plan.* (1) The Commissioner reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—45 CFR 100a.590 Evaluation by the grantee.

(2) The Commissioner looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable. (5 points)

(e) *Adequacy of resources.* (1) The Commissioner reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Commissioner looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate. (5 points)

(f) The extent to which the applicant demonstrates that the proposed research is responsive to a real problem or need in cooperative education and, further, that the findings would be of potential value to the cooperative education community, including directors of cooperative education and other institutional administrators (23 points).

(g) The extent to which the proposal includes—

(1) Well-defined experimental or data collection methodologies;

(2) A well-defined data analysis plan; and

(3) A well-defined plan for dissemination of the research findings (42 points).

(20 U.S.C. 1133b)

PART 182a—NATIONAL ALCOHOL AND DRUG ABUSE PREVENTION PROGRAM

49. Section 182a.14 is revised to read as follows:

§ 182a.14 Selection criteria.

(a) The Commissioner uses the criteria in this section to evaluate applications for new awards under this subpart. The criteria are not weighted.

(1) *Plan of operation.* (i) The Commissioner reviews each application for information that shows the quality of the plan of operation for the project.

(ii) The Commissioner looks for information that shows—

(A) High quality in the design of the project;

(B) An effective plan of management that insures proper and efficient administration of the project;

(C) A clear description of how the objectives of the project relate to the purpose of the program;

(D) The way the applicant plans to use its resources and personnel to achieve each objective; and

(E) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(2) *Quality of key personnel.* (i) The Commissioner reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(ii) The Commissioner looks for information that shows—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (a)(2) (ii)(A) and (B) of this section plans to commit to the project; and

(D) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(iii) To determine the qualifications of a person, the Commissioner considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(3) *Budget and cost effectiveness.* (i) The Commissioner reviews each application for information that shows that the project has an adequate budget and is cost effective.

(ii) The Commissioner looks for information that shows—

(A) The budget for the project is adequate to support the project activities; and

(B) Costs are reasonable in relation to the objectives of the project.

(4) *Evaluation plan.* (i) The Commissioner reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—45 CFR 100a.590 Evaluation by the grantee.

(ii) The Commissioner looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(5) *Adequacy of resources.* (i) The Commissioner reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(ii) The Commissioner looks for information that shows—

(A) The facilities that the applicant plans to use are adequate; and

(B) The equipment and supplies that the applicant plans to use are adequate.

(6) The extent of the alcohol and drug abuse problem in the schools and local community to be served.

(7) The extent to which team membership includes persons who have demonstrated leadership capabilities.

(8) The extent to which the proposed alcohol and drug abuse prevention and early intervention program activities of the applicant are addressing or will address unmet alcohol and drug abuse problems in the schools and local communities to be served.

(9) The extent to which alcohol and drug abuse prevention and early intervention efforts by the applicant will be coordinated with related efforts in the schools and communities served by the applicant.

(10) The degree of the applicant's commitment to support and facilitate the alcohol and drug abuse education activities of the team after training is completed as demonstrated by the applicant's stated intent to support these activities administratively and financially.

(11) The extent and manner in which the team will be utilized after training in the development and administration of alcohol and drug abuse prevention and early intervention programs in the schools of the applicant educational agency.

(b) In the awarding of funds under this subpart, the Commissioner will take into consideration the extent to which the funds will be distributed throughout the Nation among school systems of varying characteristics such as geographic size, ethnic composition, concentration of persons with limited English-speaking ability, and socioeconomic levels in urban, suburban and rural areas.

(20 U.S.C. 1002)

50. Section 182a.25 is revised to read as follows:

§ 182a.25 Selection criteria.

The Commissioner uses the criteria in this section to evaluate applications for new awards under this subpart. The criteria are not weighted.

(a) *Plan of operation.* (1) The Commissioner reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Commissioner looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (1) The Commissioner reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Commissioner looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Commissioner considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (1) The Commissioner reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Commissioner looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (1) The Commissioner reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—45 CFR 100a.590 Evaluation by the grantee.

(2) The Commissioner looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (1) The Commissioner reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Commissioner looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) The extent of the alcohol and drug abuse problem in the local community to be served.

(g) The extent to which team membership includes persons who have demonstrated leadership capabilities.

(h) The extent to which the proposed program acitivities address unmet alcohol and drug abuse prevention needs in the local community to be served.

(i) The extent to which alcohol and drug abuse prevention efforts by the applicant will be coordinated with related efforts in the schools and communities served by the applicant.

(j) The degree of the applicant's commitment to support and facilitate the alcohol and drug abuse education activities of the team after training is completed as demonstrated by the applicant's stated intent to support these activities administratively and financially.

(k) The extent and manner in which the team will be utilized after training in the development and administration of drug abuse prevention programs in the community.

(20 U.S.C. 1002)

PART 191—GUIDANCE AND COUNSELING

51. Section 191.33 is revised to read as follows:

§ 191.33 Selection criteria.

The Commissioner uses the criteria in this section to evaluate applications for new grants under this subpart. The maximum score for all of the criteria is 100 points.

(a) *Plan of operation.* (Maximum 10 points)

(1) The Commissioner reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Commissioner looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (Maximum 10 points)

(1) The Commissioner reviews each application for information that shows the quality of the key personnel that applicant plans to use on the project.

(2) The Commissioner looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Commissioner considers evidence of past experience and training, in field related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (Maximum 10 points)

(1) The Commissioner reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Commissioner looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Cost are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (Maximum 10 points)

(1) The Commissioner reviews each application for information that shows the quality of the evaulation plan for the project.

Cross-reference.—45 CFR 100a.590 Evaulation by the grantee.

(2) The Commissioner looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (Maximum 3 points)

(1) The Commissioner reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Commissioner looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Need.* (Maximum 9 points) The application clearly described the need, through documented evidence for training and/or improved supervisory services, and the procedures used in determining the need. The need should be based on the guidance needs of students in the location where trainees are employed.

(g) *Activities.* (Maximum 19 points) The application—

(1) Describes training or supervisory objectives and activities which respond effectively to the needs of students documented in the needs assessment;

(2) Describes project activities which are designed to serve as a resource for improving guidance and counseling services within schools which receive supervisory services, or which are served by teacher and counselor trainees;

(3) Gives evidence, in those applications proposing to provide training, of commitments from outside organizations, groups, or individuals to cooperate in the implementation of proposed activities or in those applications proposing to improve supervisory services, of plans for working with other appropriate units; and

(4) Clearly describes the criteria and proposes for selecting participants in training activities and clearly describes criteria and processes for developing comprehensive and coordinated guidance programs in activities to improve supervisory services.

(h) *Distribution of projects.* (Maximum 9 points) The extent to which approval of the project will contribute to—

(1) An equitable geographic distribution of programs funded under this subpart throughout the United States in both urban and rural areas; and

(2) The funding of a wide variety of projects which collectively can demonstrate diverse approaches to meet effectively the purposes of this subpart.

(i) *Models.* (Maximum 10 points) The extent to which approval of the project will contribute to the establishment of a model or models which can be replicated by other agencies or institutions with similar educational needs. In applying this criterion, the Commissioner shall consider—

(1) The extent to which similar needs to those addressed by the proposed project exists in other agencies or institutions; and

(2) The design of the proposed project.

(j) *Alleviation of unemployment among youth.* (Maximum 5 points) The extent to which approval of the project has potential for contributing to the alleviation of unemployment among youth through inter-relationships with business and industry, the professions, and other occupational pursuits.

(k) *World of work.* (Maximum 5 points) The project involves inservice training to—

(1) Increase the understanding of teachers and counselors of the world of business, industry, professions, and other occupational pursuits through exposure to these areas; and

(2) To provide for increased use of persons employed in business, industry, the professions and other occupational pursuits in the guidance and counseling programs by—

(i) Bringing these persons into the schools to assist teachers and counselors; and

(ii) Bringing students into the work-place for observation and participation in order to acquaint them with the nature of the work.

(20 U.S.C. 2534(a))

52. Section 191.45 is revised to read as follows:

§ 191.45 Selection criteria.

The Commissioner uses the criteria in this section to evaluate applications for new grants under this subpart. The maximum score for all of the criteria is 100 points.

(a) *Plan of operation.* (Maximum 47 points)

(1) The Commissioner reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Commissioner looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (Maximum 10 points)

(1) The Commissioner reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Commissioner looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Commissioner considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (Maximum 10 points)

(1) The Commissioner reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Commissioner looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (Maximum 10 points)

(1) The Commissioner reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—45 CFR 100a.590 Evaluation by the grantee.

(2) The Commissioner looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (Maximum 3 points)

(1) The Commissioner reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Commissioner looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Need.* (Maximum 10 points) The need for the proposed plan to reduce duplication of efforts in the State in guidance and counseling is clearly established.

(g) *Cooperative arrangements.* (Maximum 10 points) The strength and quality of arrangements made by the applicant to work with other appropriate institutions and agencies.

(20 U.S.C. 2534(b))

53. Section 191.49 is revised to read as follows:

§ 191.49 Capacity to carry out the project.

Notwithstanding the specific selection criteria in § 191.45, the Commissioner will not fund an application under this subpart unless the Commissioner is satisfied that the applicant has the capacity successfully to carry out the project.

(a) In making this judgment, the Commissioner will consider such factors as—

(1) Both the programmatic and financial management capacities of the applicant organization and its staff;

(2) Past performance by the applicant—

(i) In carrying out any prior grant under this subpart; or

(ii) In carrying out similar projects—with respect to those matters as achievement of objectives, adherence to the project conditions, programmatic and financial management, and the governing board's assumption of responsibility; and/or

(3) Consideration of local community factors which may prevent the successful operation of the grant.

(b) If the Commissioner decides not to fund an application based upon this section, the Commissioner will do so only after providing reasonable notice and an opportunity to the applicant to rebut, in writing or in an informal meeting with the responsible officials of the U.S. Office of Education, the basis for the decision.

(20 U.S.C. 2534(b))

PART 194—PUBLIC SERVICE EDUCATION PROGRAM

54. Section 194.8 is revised to read as follows:

§ 194.8 Selection criteria.

(a) The Commissioner uses the criteria in this section to evaluate applications for new grants. The maximum score for all of the criteria in paragraph (b) is 100 points.

(b) *Weighted criteria.* The extent to which the proposed project ranks high on the criteria contained below, with the maximum point score for each criterion as shown:

(1) *Plan of operation.* (i) The Commissioner reviews each application for information that shows the quality of the plan of operation for the project.

(ii) The Commissioner looks for information that shows—

(A) High quality in the design of the project;

(B) An effective plan of management that insures proper and efficient administration of the project;

(C) A clear description of how the objectives of the project relate to the purpose of the program;

(D) The way the applicant plans to use its resources and personnel to achieve each objective; and

(E) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly. (10 points)

(2) *Quality of key personnel.* (i) The Commissioner reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(ii) The Commissioner looks for information that shows—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraph (2)(ii) (A) and (B) of this section plans to commit to the project; and

(D) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(iii) To determine the qualifications of a person, the Commissioner considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides. (12 points)

(3) *Budget and cost effectiveness.* (i) The Commissioner reviews each application for information that shows

that the project has an adequate budget and is cost effective.

(ii) The Commissioner looks for information that shows—

(A) The budget for the project is adequate to support the project activities; and

(B) Costs are reasonable in relation to the objectives of the project. (10 points)

(4) *Evaluation plan.* (i) The Commissioner reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—45 CFR 100a.590 Evaluation by the grantee.

(ii) The Commissioner looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable. (5 points)

(5) *Adequancy of resources.* (i) The Commissioner reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(ii) The Commissioner looks for information that shows—

(A) The facilities that the applicant plans to use are adequate; and

(B) The equipment and supplies that the applicant plans to use are adequate. (3 points)

(6) It is likely to result in establishing, strengthening, or improving a program which prepares graduate and professional students for public service. (17 points)

(7) It is related to, or is part of, an academic program which prepares persons for leadership and management positions in local and State governments and nonprofit community service agencies, and for positions in program administration involving intergovernmental relations. (9 points)

(8) It is especially imaginative and innovative. (9 points)

(9) It is consistent with State and regional priorities. (8 points)

(10) The overall academic program of public service education is strong enough to assure the success of the proposed project when measured by such criteria as the following: (17 points)

(i) There is a clear statement of program objectives;

(ii) Institutional resources such as facilities, equipment, and libraries are adequate;

(iii) The multi-disciplinary background, education, and research ability of the faculty are of high quality;

(iv) The program offers opportunities for relevant, supervised practicum and internship experiences;

(v) The program has arrangements with government agencies or jurisdictions or other nonprofit agencies for such activities as program development, personnel exchange, and field work;

(vi) The program involves other graduate units of the institution in supportive or cooperative efforts of practical benefit to public service education; and

(vii) Graduates of the program have achieved leadership and management positions in public service careers.

(c) *Unweighted criteria.* The Commissioner also considers—

(1) The extent to which the institution requests funding of activities which received assistance under this part during the preceding fiscal year but have not been completed, provided there has been substantial progress in meeting the original goals; and

(2) The extent to which funding the application will assist in attaining a wider distribution throughout the United States of high quality public service education program.

(20 U.S.C. 1134a; 1134b(a))

PART 197—TEACHER CENTERS PROGRAM

55. Section 197.11 is revised to read as follows:

§ 197.11 Selection criteria.

The Commissioner uses the criteria in this section to evaluate applications for new grants. The maximum score for all of the criteria is 100 points. An application must receive a minimum of 50 points to be considered for funding.

(a) *Plan of operation.* (1) The Commissioner reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Commissioner looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the projects;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(vi) For grants made after October 1, 1980, a clear description of how the applicant will provide for participation of teachers employed at nonprofit private schools that choose to participate in the teacher center. (10 points)

(b) *Quality of key personnel.* (1) The Commissioner reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Commissioner looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Commissioner considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides. (7 points)

(c) *Budget and cost effectiveness.* (1) The Commissioner looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project. (5 points)

(d) *Evaluation plan.* (1) The Commissioner reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—45 CFR 100a.590 Evaluation by the grantee.

(2) The Commissioner looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable. (5 points)

(e) *Adequacy of resources.* (1) The Commissioner reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Commissioner looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate. (5 points)

(f) The extent of the teacher center policy board's authority and responsibility for supervision of the project (10 points).

(g) The potential of the proposed teacher center for increasing the effectiveness of the teachers served, in terms of the learning needs of their students (20 points).

(h) The adequacy of provisions for dissemination of the results of the project (3 points).

(i) The appropriateness of size, scope, and duration of the project so as to secure productive results (5 points).

(j) The potential of the teacher center to impact upon and improve the grantee's overall program of inservice training for teachers (15 points).

(k) The representativeness of the teacher center policy board under § 197.4(b) (10 points).

(l) The extent to which Federal funds will support new or expanded activities rather than supporting activities which are already being paid for from other resources (5 points).

(20 U.S.C. 1119a)

PART 198—TRAINING FOR HIGHER EDUCATION PERSONNEL

56. Section 198.7 is revised to read as follows:

§ 198.7 Selection criteria.

The Commissioner uses the criteria in this section to evaluate applications for new grants. The maximum score for all of the criteria is 100 points. An application must receive a minimum of 50 points to be considered for funding.

(a) *Plan of operation.* (1) The Commissioner reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Commissioner looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly. (10 points)

(b) *Quality of key personnel.* (1) The Commissioner reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Commissioner looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminator employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of person, the Commissioner considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides. (15 points)

(c) *Budget and cost effectiveness.* (1) The Commissioner reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Commissioner looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project. (10 points)

(d) *Evaluation plan.* (1) The Commissioner reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference.—45 CFR 100a.590 Evaluation by the grantee

(2) The Commissioner looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable. (10 points)

(e) *Adequacy of resources.* (1) The Commissioner reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Commissioner looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate. (10 points)

(f) The extent of need for the proposed training, as documented in the application, and the responsiveness of the proposed training to that need. (15 points)

(g) Sufficiency of size, scope, and duration of the project so as to secure productive results. (5 points)

(h) The extent to which provision is made for disseminating the results of the project and for making materials, techniques, and other outputs resulting therefrom available to the general public and specifically to those concerned with the area of education with which the project is itself concerned. (5 points)

(i) Adequacy of the methods used to determine the eligibility of persons to be served by the project. (5 points)

(20 U.S.C. 1119a–1)

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federal register

Thursday
April 3, 1980

Part XIX

Department of the Interior

Fish and Wildlife Service

Changes in Appendices to Endangered Species Convention

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

Changes in Appendices to Endangered Species Convention

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora is a treaty controlling import, export, re-export and introduction from the sea of species listed in its appendices. At their recent meeting in Costa Rica, the Party nations adopted numerous changes in Appendices I and II that took effect on June 28, 1979. Because the appendices are included in Part 23 of Title 50 of the Code of Federal Regulations, the Service issues this rule to make the list of species in Part 23 conform to the list of species now included in the Appendices.

EFFECTIVE DATE: April 3, 1980.

ADDRESSES: Please address correspondence to the Director, U.S. Fish and Wildlife Service, Office of the Scientific Authority, Washington, D.C. 20240. Information on the amendments to the Appendices is available for review during business hours of 7:45 a.m. to 4:15 p.m. Monday through Friday, in room 536, 1717 H St., N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Dr. Richard L. Jachowski, Office of the Scientific Authority, U.S. Fish and Wildlife Service, Washington, D.C. 20240, telephone (202) 653–5948.

SUPPLEMENTARY INFORMATION: Procedures for amending the list of wildlife and plant species included in Appendices I and II are provided in Article XV of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (T.I.A.S. 8249). Amendments can occur either at meetings of the Conference of the Parties or through a postal procedure. In the former situation, an amendment proposed by a Party is adopted if it is approved by a two-thirds majority of the Parties present and voting. A similar majority is required in postal votes when a vote is required as a result of the entering of an objection by any Party. The term "Party" is used here to mean a nation for which the Convention has entered into force.

The Parties considered numerous proposals to amend Appendices I and II at the second meeting of the Conference of the Parties, held in San Jose, Costa Rica, from March 19 to 30, 1979. The Service announced these proposals and its findings concerning them in a series of notices in the **Federal Register.** The most recent of these notices were published on February 14, 1979, for United States proposals (44 FR 9690–9697) and on March 26, 1979, for proposals by other Parties (44 FR 18150–18159).

In addition to proposals submitted for consideration at their second meeting, the Parties also considered two earlier postal proposals submitted by the United Kingdom to include the Grevy's zebra and Hartmann's mountain zebra in Appendix I. These proposals were referred to the meeting because less than one-half of the Parties voted on them when a postal vote was conducted (see 44 FR 5715, January 29, 1979).

The decisions by the Parties on the proposals were announced in the **Federal Register** on May 1, 1979 (44 FR 25480–25484). That publication listed only the adopted proposals; all other proposals were either withdrawn or defeated.

The regulatory requirements of 50 CFR Part 23 apply to specimens of species included in the Appendices to the Convention. The list of species to be included at 50 CFR 23.23 is provided in this rule for informational purposes. Only the Parties to the Convention, acting pursuant to its provisions, can determine whether species should be protected through inclusion in the appendices.

When the recent decisions of the Parties on proposals to amend the Appendices were announced in the **Federal Register,** comment was invited on whether the United States should enter a reservation with respect to species that would be included in the Appendices. All comments received were carefully considered and are discussed below. The Service determined, in the exercise of its responsibility to communicate with the Parties on these matters, that no reservations should be taken by the United States.

Several changes also have occurred in the list of species included in Appendix III since the list was first published in the **Federal Register** on February 22, 1977 (42 FR 10462–10488). Appendix III includes species that any Party identifies as being subject to regulation within its jurisdiction for the purpose of preventing or restricting exploitation, and as needing the cooperation of other Parties in the control of trade. Inclusion of species in this appendix can be done unilaterally by any Party and does not require approval by the other Parties. The only action other Parties may take if they disagree is to enter a reservation, which means they would not be treated as Parties to the Convention with respect to the species. The present rule incorporates all changes in Appendix III to date.

The following list shows specific reservations now in force for species in all appendices.

Species	Appendix	Parties reserving
Mammals:		
Whales, porpoises, dolphins, (Order Cetacea)	II	Canada, South Africa.
Dolphins, humpback (*Sotalia* spp. and *Sousa* spp.).	I	Canada, South Africa
Porpoise, finless (*Neophocaena phocaenoides*).	I	Canada.
Whale, fin (*Balaenoptera physalus*)	I (except stocks in App. II)	Australia, Canada, South Africa, U.S.S.R.
Whale, fin	II (stocks in North Atlantic off Iceland and Newfoundland, stock in area from 60° to 120° west longitude from 40° south latitude to Antarctic Continent).	Canada, South Africa.
Whale, gray (*Eschrichtius robustus glaucus*)	I	Canada.
Whale, sei (*Balaenoptera borealis*)	I (North Pacific stock and stock in area from 0° longitude to 70° east longitude from equator to Antarctic Continent).	Australia, Canada, South Africa U.S.S.R.
Whale, sei (*Balaenoptera borealis*)	II (except stocks in App. I)	Canada, South Africa.
Bear, grizzly and brown (*Ursus arctos*—North Amercian subspecies).	II	Canada
Bear, red (*Ursus arctos isabellinus*)	I	Switzerland.
Caracal (*Felis caracal*—Asian population)	I	Switzerland.
Cat, rusty spotted (*Felis rubiginosa*—Indian population).	I	Switzerland.
Lynx, European (*Felis lynx*)	II	U.S.S.R.
Otter, European (*Lutra lutra*)	I	U.S.S.R.
Wolf, gray (*Canis lupus*)	II	U.S.S.R.
Wolf, gray (*Canis lupus*—populations of Bhutan, India, Nepal and Pakistan).	I	Switzerland.
Antelope, Tibetan (*Pantholops hodgsoni*)	I	Switzerland.
Sheep, bighorn (*Ovis canadensis*)	II	Canada.
Birds:		
Goose, Aleutian (*Branta canadensis leucopareia*).	I	Switzerland.
Goose, Tule (*Anser albifrons gambelli*)	II	Canada.
Conure, Patagonia (*Cyanoliseus patagonus byroni*).	II	Switzerland.
Hemipode, collared (*Pedionomus torquatus*)	II	Switzerland.
Button quail, black-breasted (*Turnix melanogaster*).	II	Switzerland.

Species	Appendix	Parties reserving
Birds:		
Pigeon, Nicobar (*Caloenas nicobarica*)	I	Switzerland.
Bustard, Houbara (*Chalmydotis undulata*)	I	Switzerland.
Reptiles:		
Caiman, black (*Melanosuchus niger*)	I	France.
Crocodile, African slender-snouted (*Crocodylus cataphractus*).	I	France.
Crocodile, American (*Crocodilus acutus*—United States population).	I	Switzerland.
Crocodile, dwarf (*Osteolaemus tetraspis*)	I	France.
Crocodile, Nile (*Crocodilus niloticus*)	I	France.
Crocodile, saltwater (*Crocodilus porosus*—except Papua New Guinea population).	I	Federal Republic of Germany, France, Switzerland.
Sea turtle, hawksbill (*Eretmochelys imbricata*)	I	France.
Sea turtle, green (*Chelonia mydas*)	I	France.
Fishes:		
Cisco, longjaw (*Coregonus alpenae*)	I	Canada.
Pike, blue (*Stizostedion vitreum glaucum*)	I	Canada.
Sturgeon, Atlantic (*Acipenser oxyrhynchus*)	II	Canada.
Sturgeon, lake (*Acipenser fulvescens*)	II	Canada.
Molluscs:		
Mussel, Chilean (*Mytilus chorus*)	II	Switzerland.
All species of wildlife	III	Denmark.
Plants:		
Cereopegia spp	II	Switzerland.
Freres indica	II	Switzerland.
Byblis spp	II	Switzerland.
Cephalotus follicularis	II	Switzerland.
Chloanthaceae spp	II	Switzerland.
Anigozanthos spp	II	Switzerland.
Macropidia fulginosa	II	Switzerland.
Verticordia spp	II	Switzerland.
Banksia spp	II	Switzerland.
Conospermum spp	II	Switzerland.
Dryandra polycephala	II	Switzerland.
Xylomelum spp	II	Switzerland.
Boronia spp	II	Switzerland.
Crowea spp	II	Switzerland.
Geleznowia verrucosa	II	Switzerland.
Pimelea physodes	II	Switzerland.

The Service's **Federal Register** notice of May 1, 1979, requested information that might lead the United States to enter a reservation with respect to changes in appendices made at the second meeting of the Conference of the Parties. The Executive Director of the Texas Parks and Wildlife Department, in a letter dated May 24, 1979, requested that the United States enter reservations with respect to the orders Cetacea (whales, porpoises and dolphins), Falconiformes (hawks, eagles, etc.) and Strigiformes (owls) in Appendix II, on the grounds that insufficient evidence was presented to justify the listing of many member species in terms of criteria for listing that the Parties previously adopted.

The Service denied this request, citing the negotiations at the second meeting that led the U.S. Delegation to accept these amendments, the difficulties experienced by Customs officials of other nations in distinguishing between protected and unprotected species, and the absence of any significant trade in these species to or from the U.S.

The format of the appendices has been revised in this rule to list vertebrate wildlife species alphabetically by scientific name within each order instead of by common name within each class. Listing by scientific name overcomes the difficulty of finding the entry for a species by common name when the species has several common names. Organizing the species by order should make it easier to find an entry by eliminating the need to search the entire list. The Service plans to publish another list of the same species arranged alphabetically by common name for the convenience of persons accustomed to using such names.

The format includes a column for the date when the Convention applied to each species, for determining if specimens of listed species were acquired before the provisions of the Convention applied to them. Trade in specimens so acquired may occur without need for permits under the Convention if authorized by a certificate to that effect issued by the Management Authority.

The principle followed in applying dates is to use the date when the Convention first entered into force for a species, including circumstances where a species is later transferred from one appendix to another or is grouped with other species in the listing of a taxon above the species level. In the latter circumstance, each species or group of species in the higher taxon having a different date is listed separately.

The introduction to the appendices in 50 CFR 23.23 also has been revised in this rule for clarity and to conform to the new format. Because these paragraphs are explanatory and do not change the effect of the regulation, it has been determined that prior proposal of this revision is not required. For the same reasons, this action will become effective upon publication in the **Federal Register.** The revision includes an explanation of how the effective dates for species listings are determined. It also indicates more clearly whether or not the regulations apply to parts and derivatives of species in the different appendices, as set forth in Article II of the Convention.

The appendices include the following numbers of taxa as of June 28, 1979:

Group	Appendix			Total
	I	II	III	
Mammals	174	61	39	274
Birds	116	90	24	230
Reptiles	52	27	3	82
Amphibians	6	4	0	10
Fishes	8	15	0	23
Molluscs	26	21	0	47
Insects	0	4	0	4
Plants	47	49	5	101
Total	429	271	71	771

The term "taxa" is used here to mean listings as they occur in the appendices, which range from geographically distinct populations up to entire orders. The term "species" as used in this rule is defined by the Convention to mean any species, subspecies, or geographically separate population thereof.

Certain of the listed taxa at or above the species level include species, subspecies or populations that have been listed for different reasons: some because they are currently or potentially threatened with extinction, others because of the need to effectively control trade in such currently or potentially threatened species. Information on the basis for listing species is available from the Office of the Scientific Authority.

Amendments to Appendices I and II contained in this rule have entered into force by the terms of the Convention and cannot be the subject of reservations by the United States. Earlier **Federal Register** notices allowed an opportunity for comment on these

amendments. Therefore, this rule is made effective on the date of **Federal Register** publication, as provided in 43 CFR 14.5(b)(5).

This rule is issued under the authority of the Endangered Species Act of 1973 (16 U.S.C. 1531–1543; 87 Stat. 884, as amended), and was prepared by Dr. Richard L. Jachowski, Office of the Scientific Authority.

Note.—The Department of the Interior has determined that Executive Order 12044 does not apply to this rule beause it involves a foreign affairs function of the United States.

Dated: February 6, 1980.

Robert S. Cook,

Acting Director, Fish and Wildlife Service.

Part 23 of Title 50 of the Code of Federal Regulations is amended by revising § 23.23 to read as follows:

§ 23.23 Species listed in Appendices I, II, and III.

(a) The list in this section includes species of wildlife and plants placed in Appendix I, II or III in accordance with the provisions of Articles XV and XVI of the Convention.

The list of species is organized as follows:

Major group	Subgroups
Mammals	Orders, in taxonomic sequence.
Birds	Do.
Reptiles	Do.
Amphibians	Do.
Fishes	Do.
Molluscs	Classes.
Insects	None.
Plants	Families, in alphabetical sequence.

In each group, species are listed in alphabetical sequence. The scientific name takes precedence over the common name in determining if a species is listed.

(b) The appendix column of the list includes the annotation "pe" (=possibly extinct) for certain species. It also contains the names of Parties including species in Appendix III.

(c) For purposes of issuing United States certificates of exemption under Article VII(3), the date when the Convention applies to a species is the date when the inclusion of that species in the appendices enters into force under the terms of Article XV or XVI of the Convention. The date of first listing is retained if a species is transferred from one appendix to another or if a listed species is subsequently included with other species in the listing of a taxon above the species level. Such species are shown separately in this publication of the appendices. The date of a subsequent listing is used only if a species is entirely deleted from the appendices and is subsequently reincluded after an intervening period of time.

(d) All living or dead wildlife in Appendix I or II and plants included in Appendix I and all readily recognizable parts and derivatives thereof are subject to the regulations of this Part. All living or dead wildlife included in Appendix III and plants included in Appendix II or III, and any readily recognizable parts or derivatives thereof specified in the list of species are subject to the regulations of this part.

Species	Common name	Appendix	Date listed (month/day/year)
CLASS MAMMALIA:	MAMMALS:		
Order Monotremata:	Monotremes:		
Zaglossus spp	Spiny anteaters	II	2/4/77
Order Marsupialia:	Marsupials:		
Bettongia spp (except species listed below)	Rat kangaroos	I	6/28/79
B. penicillata	Brush-tailed rat kangaroo, Woylie	I	7/1/75
B. lesuer	Lesueur's rat kangaroo, Boodie	I	7/1/75
B. tropica	Queensland rat kangaroo, Northern rat kangaroo.	I	7/1/75
Burramys parvus	Mountain pigmy possum	II	7/1/75
Caloprymnus campestris	Desert rat kangaroo	I pe	7/1/75
Chaeropus ecaudatus	Pig-footed bandicoot	I pe	7/1/75
Dendrolagus bennettianus	Bennett's tree kangaroo, Dusky tree kangaroo.	II	6/28/79
D. inustus	Tree kangaroo	II	7/1/75
D. lumholtzi	Lumholtz's tree kangaroo	II	6/28/79
D. ursinus	Grizzled tree kangaroo	II	7/1/75
Lagorchestes hirsutus	Western hare-wallaby, Wurrup	I	7/1/75
Lagostrophus fasciatus	Banded hare-wallaby, Munning	I	7/1/75
Lasiorhinus krefftii	Queensland hairy-nosed wombat	I	7/1/75
Macrotis lagotis	Rabbit bandicoot, Bilby	I	7/1/75
M. leucura	Lesser rabbit bandicoot, Yallara	I	7/1/75
Onychogalea fronata	Bridled nail-tailed wallaby	I	7/1/75
O. lunata	Crescent nail-tailed wallaby	I	7/1/75
Perameles bougainvillei	Barred bandicoot, Long-nosed bandicoot, Marl.	I	7/1/75
Phalanger maculatus	Spotted cuscus	II	6/28/79
P. orientalis	Gray cuscus	II	6/28/79
Sminthopsis longicaudata	Long-tailed marsupial mouse, Long-tailed dunnart.	I	7/1/75
S. psammophila	Large desert marsupial mouse, Sandhill dunnart.	I	7/1/75
Thylacinus cynocephalus	Thylacine, Tasmanian wolf	I pe	7/1/75
Order Insectivora:	Insectivores:		
Erinaceus frontalis	African hedgehog	II	7/1/75
Order Chiroptera:	Bats:		
Vampyrops lineatus (all parts and derivatives)	White-lined bat	III (Uruguay)	7/14/76
Order Primates:	Primates: Monkeys, Apes, etc.:		
All species except those in app. I or with earlier date in app. II.		II	2/4/77
Allocebus spp	Hairy-eared dwarf lemur	I	7/1/75
Alouatta palliata (=*villosa*)	Mantled howler monkey	I	7/1/75
Ateles geoffroyi frontatus	Black-handed spider monkey	I	7/1/75
A. geoffroyi panamensis	Black-handed spider money	I	7/1/75
Avahi spp	Avahis, Woolly lemurs	I	7/1/75
Brachyteles arachnoides	Woolly spider monkey	I	7/1/75
Cacajao spp	Uakaris	I	7/1/75
Callimico goeldii	Goeldi's monkey, Callimico	I	7/1/75
Callithrix aurita	White-eared marmoset	I	2/4/77
C. flaviceps	Buff-headed marmoset	I	2/4/77
Cebus capucinus	White-throated capuchin	II	7/1/75
Cercocebus galeritus galeritus	Tana River mangabey, Agile mangabey	I	7/1/75
Cheirogaleus spp	Dwarf lemurs	I	7/1/75
Chiropotes albinasus	White-nosed saki	I	7/1/75
Colobus badius kirkii	Zanzibar red colobus	I	7/1/75
C. badius rufomitratus	Tana River red colobus	I	7/1/75
C. badius gordonorum	Uhehe red colobus	II	7/1/75
C. versus	Olive colobus	II	7/1/75
Daubentonia madagascariensis	Aye-aye	I	7/1/75
Hapalemur spp	Gentle lemurs	I	7/1/75
Hylobates spp	Gibbons	I	7/1/75
Gorilla gorilla	Gorilla	I	7/1/75
Indri spp	Indri	I	7/1/75
Lemur spp	Lemurs	I	7/1/75
Lepilemur sp	Sportive or weasel lemur	I	7/1/75
Leontopithecus (*Leontideus*) spp	Golden lion tamarin	I	7/1/75
Loris tardigradus	Slender loris	I	7/1/75
Macaca silenus	Lion-tailed macaque	II	7/1/75
M. sylvanus	Barbary ape	II	7/1/75
Microcebus spp	Mouse lemurs	I	7/1/75
Nasalis larvatus	Proboscis monkey	I	7/1/75
Nycticebus coucang	Slow loris	II	7/1/75
Pan paniscus	Pygmy chimpanzee, Bonobo	I	7/1/75
P. troglodytes	Chimpanzee	I	7/1/75
Phaner sp	Fork or fork-marked mouse lemur	I	7/1/75
Pongidae spp. (all species in family except those with earlier date)	Chimpanzees, Gorillas, Orangutans	I	2/4/77
Pongo pygmaeus abelli	Orangutan	I	7/1/75
P. pygmaeus pygmaeus	Orangutan	I	7/1/75
Presbytis entellus	Gray or common Indian langur	I	7/1/75

Species	Common name	Appendix	Date listed (month/day/year)
P. geei	Golden langur	I	7/1/75
P. johni	Nilgiri langur	II	7/1/75
P. pileatus	Capped langur	I	7/1/75
P. potenziana	Long-tailed langur, Mentawai leaf monkey.	I	2/4/77
Propithecus spp	Sifakas	I	7/1/75
Pygathrix nemaeus	Douc langur	I	7/1/75
Rhynopithecus roxellanae	Snub-nosed langur	II	7/1/75
Saguinus bicolor	Pied tamarin	I	2/4/77
S. leucopus	White-footed tamarin, Silvery-brown bare-face tamarin.	I	2/4/77
S. oedipus	Cotton-top tamarin	I	2/4/77
Saimiri oerstedii	Red-backed squirrel monkey	I	7/1/75
Simias concolor	Pagai Island langur	I	7/1/75
Symphalangus syndactylus	Siamang	I	7/1/75
Order Edentata:	Anteaters, Sloths, Armadillos:		
Bradypus boliviensis	Three-toed sloth	II	7/1/75
B. griseus (all parts and derivatives)	Three-toed sloth	III (Costa Rica).	10/28/76
Choloepus hoffmanni (all parts and derivatives).	Two-toed sloth	(Costa Rica)	10/28/76
Cabassous centralis (all parts and derivatives).	Five-toed armadillo	III (Costa Rica).	10/28/76
C. gymnurus (*tatouay*) (all parts and derivatives).	Naked-tailed armadillo	III (Uruguay)	7/14/76
Myrmecophaga tridactyla	Giant anteater	II	7/1/75
Priodontes giganteus (=*maximus*)	Giant armadillo	I	7/1/75
Tamandua tetradactyla chapadensis	Tamandua, Collared anteater	II	7/1/75
Order Pholidota:	Pangolins, Scaly Anteaters:		
Manis crassicaudata	Thick-tailed or Indian pangolin	II	7/1/75
M. gigantea (all parts and derivatives)	Giant pangolin	III (Ghana)	2/26/76
M. javanica	Malayan pangolin	II	7/1/75
M. longicaudata (all parts and derivatives)	Long-tailed pangolin	III (Ghana)	2/26/76
M. pentadactyla	Chinese pangolin	II	7/1/75
M. temmincki	Common African ground pangolin	I	7/1/75
M. tricuspis (all parts and derivatives)	African tree pangolin	III (Ghana)	2/26/76
Order Lagomorpha:	Rabbits, Hares:		
Caprolagus hispidus	Hispid hare, Assam rabbit	I	7/1/75
Nesolagus netscheri	Sumatra short-eared rabbit	II	7/1/75
Romerolagus diazi	Mexican volcano rabbit	I	7/1/75
Order Rodentia:	Rodents:		
Anomalurus spp., species native to Ghana, (all parts and derivatives).	Scaly-tailed flying squirrels	III (Ghana)	2/26/76
Chinchilla spp. (populations of South America, except subspecies listed below).	Chinchilla	I	2/4/77
C. brevicaudata boliviana	Chinchilla	I	7/1/75
Coendou spinosus (all parts and derivatives)	Prehensile-tailed porcupine	III (Uruguay)	7/14/76
Cynomys mexicanus	Mexican prairie dog	I	7/1/75
Dipodomys phillipsii phillipsii	Phillips kangaroo rat	II	7/1/75
Epixerus ebii (all parts and derivatives)	African palm squirrel	III (Ghana)	2/26/76
Hystrix, spp., species native to Ghana (all parts and derivatives).	Crested porcupines	III (Ghana)	2/26/76
Idiurus spp., species native to Ghana (all parts and derivatives).	Pigmy flying squirrels	III (Ghana)	2/26/76
Lariscus hosei	Four-striped or Bornean black-striped ground squirrel.	II	7/1/75
Leporillus conditor	Australian stick-nest rat	I	7/1/75
Notomys spp. (except species listed below)	Australian hopping mice	II	6/28/79
N. aquilo	Australian northern hopping mouse, Cape York hopping mouse.	II	7/1/75
Pseudomys fumeus	Smokey mouse	I	7/1/75
P. praeconis	Shark Bay mouse	I	7/1/75
P. shortridgei	Western pseudo rat, Shortridge's mouse	II	7/1/75
Ratufa spp	Giant squirrels	II	7/1/75
Sciurus deppei (all parts and derivatives)	Deppe's squirrel	III (Costa Rica).	10/28/76
Xeromys myoides	False water rat	I	7/1/75
Zyzomys pedunculatus	McDonnell Range rock rat	I	7/1/75
Order Cetacea:	Whales, Porpoises, Dolphins:		
All species except those in app. I or with earlier date in app. II.		II	6/28/79
Balaena mysticetus	Bowhead whale	I	7/1/75
Balaenoptera borealis (North pacific stock and stock in area from 0° longitude to 70° east longitude from equator to Antarctic Continent).	Sei whale	I	2/4/77
B. borealis (all stocks except those in app. I)	Sei whale	II	2/4/77
B. musculus	Blue whale	I	7/1/75
B. physalus (all stocks except those in app. II).	Fin whale	I	2/4/77
B. physalus (Stocks in North Atlantic off Iceland and Newfoundland, stock in area from 60° to 120° west longitude from 40° south latitude to Antarctic Continent).	Fin whale	II	2/4/77
Eubalaena spp.	Right whale	I	7/1/75
Eschrichtius robustus (*glaucus*)	Gray whale	I	7/1/75
Lipotes vexillifer	White flag dolphin, Chinese river dolphin	I	6/28/79
Megaptera novaeangliae	Humpback whale	I	7/1/75
Monodon monoceros	Narwhal	II	11/16/75
Neophocaena phocaenoides	Finless porpoise	I	6/28/79
Phocoena sinus	Gulf of California harbor porpoise, Cochito.	I	6/28/79
Platanista gangetica	Ganges River Dolphin	I	7/1/75

Species	Common name	Appendix	Date listed (month/day/year)
P. minor	Indus River dolphin	I	6/28/79
Pontoporia (Stenodelphis) blainvillei	LaPlata River dolphin	II	7/14/76
Sotalia spp.	Humpbacked dolphins	I	6/28/79
Sousa spp.	Humpbacked dolphins	I	6/28/79
Order Carnivora:	Carnivores: Cats, Bears, etc.:		
Acinonyx jubatus	Cheetah	I	7/1/75
Ailurus fulgens	Lesser panda	II	7/1/75
Aonyx microdon	West African "clawless" otter	I	7/1/75
Bassaricyon gabbii (all parts and derivatives)	Bushy-tailed olingo	III (Costa Rica).	10/28/76
B. sumichrasti (all parts and derivatives)	Cacomistle	III (Costa Rica).	10/28/76
Canis lupus (all subspecies and populations except those listed below).	Gray wolf	II	2/4/77
C. lupus (India, Pakistan, Bhutan and Nepal populations).	Gray wolf	I	2/4/77
C. lupus crassodon	Gray wolf	II	7/1/75
C. lupus irremotus	Gray wolf	II	7/1/75
C. lupus monstrabilis	Gray wolf	II	7/1/75
C. lupus pallipes	Gray wolf	II	7/1/75
Chrysocyon brachyurus	Maned wolf	II	7/1/75
Conepatus humboldti	Humboldt's hognose skunk	II	6/28/79
Cryptoprocta ferox	Fossa	II	2/4/77
Cuon alpinus	Dhole	II	7/1/75
Cynogale bennetti	Otter civet	II	7/1/75
Dusicyon culpaeus	Culepo fox	II	6/28/79
D. fulvipes	Chiloe fox	II	6/28/79
D. griseus	Chico gray fox Argentine gray fox	II	6/28/79
Enhydra lutris nereis	Southern sea otter	I	7/1/75
Eupleres goudoti	Malagasy mongoose	II	2/4/77
E. major	Malagasy mongoose	II	2/4/77
Felidae spp. (all species in Family except those in app. I or *Felis catus*).	Cats (not including house cats)	II	2/4/77
Felis bengalensis bengalensis	Leopard cat	I	7/1/75
F. caracal (Asian population)	Caracal	I	2/4/77
F. concolor coryi	Florida puma	I	7/1/75
F. concolor costaricensis	Costa Rican puma	I	7/1/75
F. concolor couguar	Eastern puma, Adirondack cougar	I	7/1/75
F. jacobita	Andean cat	I	7/1/75
F. (Lynx) rufa escuinapae	Mexican bobcat	I	7/1/75
F. marmorata	Marbled cat	I	7/1/75
F. nigripes	Black-footed cat	I	7/1/75
F. pardalis mearnsi	Ocelot	I	7/1/75
F. pardalis mitis	Brazilian ocelot	I	7/1/75
F. planiceps	Flat-headed cat	I	7/1/75
F. rubiginosa (Indian population)	Rusty spotted cat	I	2/4/77
F. temminicki	Asian golden cat	I	7/1/75
F. tigrina oncilla	Tiger cat	I	7/1/75
F. wiedii nicaraguae	Central American margay	I	7/1/75
F. wiedii salvinia	Guatemalan margay	I	7/1/75
F. yagouaroundi cacomitli	Gulf Coast jaguarundi	I	7/1/75
F. yagouaroundi fossata	Guatemalan jaguarundi	I	7/1/75
F. yagouaroundi panamensis	Panamanian jaguarundi	I	7/1/75
F. yagouaroundi tolteca	Sinaloan jaguarundi	I	7/1/75
Fennecus zerda (all parts and derivatives)	Fennec fox	III (Tunisia)	4/22/76
Fossa fossa	Fanaloka	II	2/4/77
Galictis allamandi (all parts and derivatives)	Grison	III (Costa Rica).	10/28/76
Hemigalus derbyanus	Banded palm civet	II	2/4/77
Helarctos malayanus	Sun bear	I	7/1/75
Hyaena brunnea	Brown hyaena	I	7/1/75
Lutrinae spp. (all species in subfamily except those in app. I) .	Otters	II	2/4/77
Lutra felina	Marine otter	I	7/1/75
L. longicaudis	Long-tailed or neotropical otter	I	7/1/75
L. lutra	European otters	I	2/4/77
L. provocax	Southern river otter of South America	I	7/1/75
Mellivora capensis (all parts and derivatives)	Honey badger, Ratel	III (Ghana and Botswana).	2/26/76
Mustela nigripes	Black-footed ferret	I	7/1/75
Nasua nasua solitaria (all parts and derivatives).	Coatimundi	III (Uruguary)	7/14/76
Neofelis nebulosa	Clouded leopard	I	7/1/75
Panthera leo persica	Indian lion	I	7/1/75
P. onca	Jaguar	I	7/1/75
P. pardus	Leopard	I	7/1/75
P. tigris (all subspecies except *P. tigris altaica*).	Tiger	I	7/1/75
P. uncia	Snow leopard	I	7/1/75
Prionodon linsang	Banded linsang	II	7/1/75
P. pardicolor	Spotted linsang	I	7/1/75
Proteles cristatus (all parts and derivatives)	Aardwolf	III (Botswana)	4/24/78
Pteronura brasiliensis	Giant otter	I	7/1/75
Selenarctos thibetanus (except subspecies listed below).	Asiatic black bear	I	6/28/79
S. thibetanus gedrosianus	Baluchistan black bear	I	2/4/77
Speothos venaticus	Bush dog	I	2/4/77
Tremarctos ornatus	Spectacled bear	I	2/4/77
Ursus arctos (all North American subspecies except that listed below).	Brown bear, Grizzly	II	7/1/75
U. arctos (Italian population)	European Brown bear	I	7/1/75
U. arctos nelsoni	Mexican grizzly bear	I	7/1/75

Species	Common name	Appendix	Date listed (month/day/year)
U. arctos pruinosus	Tibetan blue bear	I	7/1/75
U. arctos isabellinus	Red bear	I	6/28/79
U. (Thalarctos) maritimus	Polar bear	II	7/1/75
Viverra civetta (all parts and derivatives)	African civet	III (Botswana)	4/24/78
Vulpes cana	Blanford's fox	II	2/4/77
V. velox/hebes	Swift fox	I	7/1/75
Order Pinnipedia:			
Arctocephalus spp. (except species listed below).	Southern fur seals	II	2/4/77
A. australis	Southern fur seal	II	7/1/75
A. galapagoensis	Galapagos fur seal	II	7/1/75
A. philippii	Juan Fernandez fur seal	II	7/1/75
A. townsendi	Guadalupe fur seal	I	7/1/75
Mirounga angustirostris	Northern elephant seal	II	7/1/75
M. leonina	Southern elephant seal	II	7/1/75
Monachus spp.	Monk seals	I	7/1/75
Odobenus rosmarus (all parts and derivatives).	Walrus	III (Canada)	11/16/75
Order Tubulidentata:			
Orycteropus afer	Aardvarks: Aardvark	II	7/1/75
Order Proboscidea:			
Elephas maximus	Elephants: Asian elephant	I	7/1/75
Loxodonta africana	African elephant	II	2/4/77
Order Sirenia:			
Dugong dugon (except for Australian population).	Dugongs, Manatees: Dugong	I	7/1/75
D. dugon (Australian population)	Dugong	II	7/1/75
Trichechus inunguis	South American or Amazonian manatee	I	7/1/75
T. manatus	West Indian manatee	I	7/1/75
T. senegalensis	West African manatee	II	7/1/75
Order Perissodactyla:			
Equus grevyi	Odd-toed ungulates: Grevy's zebra	I	6/28/79
E. hemionus (except subspecies listed below)	Asian wild ass	II	7/1/75
E. hemionus hemionus	Asian wild ass	I	7/1/75
E. hemionus khur	Asian wild ass	I	7/1/75
E. przewalskii	Przewalski's horse	I	7/1/75
E. zebra hartmannae	Hartmann's mountain zebra	II	6/28/79
E. zebra zebra	Cape mountain zebra	I	7/1/75
Tapirus bairdii	Central American tapir	I	7/1/75
T. indicus	Asian tapir	I	7/1/75
T. pinchaque	Mountain tapir	I	7/1/75
T. terrestris	South American tapir	II	7/1/75
Rhinocerotidae spp. (all species in the family except those with earlier date on app. I).	Rhinoceroses	I	2/4/77
Ceratotherium simum cottoni	Northern white rhinoceros	I	7/1/75
Diceros bicornis	Black rhinoceros	I	7/1/75
Didermocerus (=Dicerorhinus) sumatrensis	Sumatran rhinoceros	I	7/1/75
Rhinoceros sondaicus	Javan rhinoceros	I	7/1/75
R. unicornis	Great Indian one-horned rhinoceros	I	7/1/75
Order Artiodactyla:			
Addax nasomaculatus	Even-toed Ungulates: Addax	II	7/1/75
Ammotragus lervia (all parts and derivatives)	Barbary sheep, Aoudad	III	4/22/76
Antilocapra americana mexicana	Mexican pronghorn	II	7/1/75
A. americana peninsularis	Baja pronghorn	I	7/1/75
A. americana sonoriensis	Sonoran pronghorn	I	7/1/75
Antilope cervicapra (all parts and derivatives).	Blackbuck antelope	III (Nepal)	11/16/75
Axis (=Cervus or Hyelaphus) calamianensis	Calamianes deer	I	7/1/75
A. kuhli	Kuhl's deer, Bawean hog deer	I	7/1/75
A. porcinus annamiticus	Indochina hog deer	I	7/1/75
Babyrousa babyrussa	Babirusa	I	7/1/75
Blastocerus dichotomus	Marsh deer	I	7/1/75
Bison bison athabascae	Woods bison	I	7/1/75
Boocercus (Taurotragus) euryceros (all parts and derivatives).	Bongo antelope	III (Ghana)	2/26/76
Bos gaurus	Seladang, Gaur	I	7/1/75
B. (grunniens) mutus	Wild yak	I	7/1/75
Bubalus bubalis (all parts and derivatives)	Water buffalo	III (Nepal)	11/16/75
B. (Anoa) depressicornis	Lowland anoa	I	7/1/75
B. (Anoa) mindorensis	Tamaraw	I	7/1/75
B. (Anoa) quarlesi	Mountain anoa	I	7/1/75
Capra falconeri (except subspecies listed below).	Markhor	II	7/1/75
C. falconeri chialtanensis	Chialtan markhor	I	7/1/75
C. falconeri jerdoni	Straight-horned markhor	I	7/1/75
C. falconeri megaceros	Kabal or straight-horned markhor	I	7/1/75
Capricornis sumatraensis	Sumatran serow	I	7/1/75
Cephalophus monticola	Blue duiker	II	7/1/75
Cervus duvaucelli	Swamp deer	I	7/1/75
C. elaphus bactrianus	Bactrian deer	II	7/1/75
C. elaphus barbarus (all parts and derivatives).	Barbary deer	III (Tunisia)	4/22/76
C. elaphus hanglu	Kashmir stag	I	7/1/75
C. eldi	Eld's brow-antlered deer	I	7/1/75
Choeropsis liberiensis	Pygmy hippopotamus	II	7/1/75
Dama mesopotamica	Persian fallow deer	I	2/4/77
Damaliscus dorcas dorcas	Bontebok	I	7/1/75
D. lunatus (all parts and derivatives)	Sassaby antelope, Korrigum	III (Ghana)	2/26/76
Gazella dorcas (all parts and derivatives)	Dorcas gazelle	III (Tunisia)	4/22/76
G. gazella cuvieri (all parts and derivatives)	Mountain gazelle	III (Tunisia)	4/22/76
G. leptoceros (all parts and derivatives)	Slender-horned gazelle	III (Tunisia)	4/22/76
Hippocamelus antisensis	North Andean huemal	I	7/1/75
H. bisulcus	South Andean huemal	I	7/1/75
Hippopotamus amphibius (all parts and derivatives).	Hippopotamus	III (Ghana)	2/26/76

Species	Common name	Appendix	Date listed (month/day/year)
Hippotragus equinus (all parts and derivatives).	Roan antelope	III (Ghana)	2/26/76
H. niger variani	Giant sable antelope	I	7/1/75
Hyemoschus aquaticus (all parts and derivatives).	Water chevrotain	III (Ghana)	2/26/76
Kobus leche	Lechwe	II	7/1/75
Lama guanicoe	Guanaco	II	8/12/78
Moschus moschiferus (Himalayan population)	Musk deer	I	7/1/75
Moschus spp.* (all except population on app. I).	Musk deer	II	2/16/79
Nemorhaedus goral	Goral	I	7/1/75
Novibos (=Bos) sauveli	Kouprey	I	7/1/75
Oryx dammah	scimitar-horned oryx	II	7/1/75
O. leucoryx	Arabian Oryx	I	7/1/75
Ovis ammon (except subspecies listed below)	Argali	II	7/1/75
O. ammon hodgsoni	Tibetan argali	I	7/1/75
O. canadensis	Bighorn sheep	II	7/1/75
O. orientalis ophion	Cyprian red sheep	I	7/1/75
O. vignei	Shapo, Urial	I	7/1/75
Ozotoceros bezoarticus	Pampas deer	I	7/1/75
Pantholops hodgsoni	Tibetan antelope	I	7/1/75
Pudu mephistophiles	Pudu	II	7/1/75
P. pudu	Pudu	I	7/1/75
Rupicapra rupicapra ornata	Apennian chamois	I	7/1/75
Sus salvanius	pygmy hog	I	7/1/75
Tetracerus quadricornis (all parts and derivatives).	Four-horned antelope	III (Nepal)	11/16/75
Tragelaphus spekei (all parts and derivatives)	Sitatunga antelope	III (Ghana)	2/26/76
Vicugna vicugna	Vicuna	I	7/1/75
CLASS AVES:	BIRDS:		
Order Sphenisciformes:	Penguins:		
Spheniscus demersus	Jackass penguin, Blackfooted Cape penguin.	II	7/1/75
Order Rheiformes:	Rheas:		
Pterocnemia pennata (except subspecies listed below).	Lesser rhea	I	6/2879
P. pennata garleppi	Lesser rhea	I	7/1/75
P. pennata pennata	Darwin's rhea	I	7/1/75
Rhea americana (except subspecies listed below; all parts and derivatives).	Greater or common rhea	III (Uruguay)	7/14/76
R. americana albescens	Greater rhea	II	7/1/75
Order Tinamiformes:	Tinamous:		
Rhynchotus rufescens maculicollis	Red-winged tinamou	II	7/1/75
R. rufescens pallescens	Southern red-winged tinamou	II	7/1/75
R. rufescens rufescens	Western red-winged tinamou	II	7/1/75
Tinamus solitarius	Solitary tinamou	I	7/1/75
Order Podicipediformes:	Grebes:		
Podilymbus gigas	Atitlan grebe	I	7/1/75
Order Procellariiformes:	Albatrosses, Shearwaters, Petrels:		
Diomedea albatrus	Short-tailed albatross	I	7/1/75
	Tropicbirds, Pelicans, Frigatebirds:		
Fregata andrewsi	Andrews frigate bird	I	7/1/75
Pelecanus crispus	Dalmatian pelican	II	7/1/75
Sula abbotti	Abbott's booby	I	7/1/75
Order Ciconiiformes:	Herons, Storks, Ibises, Flamingos:		
Ardea goliath (all parts and derivatives)	Goliath heron	III (Ghana)	2/26/76
Bubulcus (=Ardeola) ibis (all parts and derivatives).	Cattle egret	III (Ghana)	2/26/76
Casmerodius albus (all parts and derivatives)	Great white egret	III (Ghana)	2/26/76
Ciconia ciconia boyciana	Oriental white stork	I	7/1/75
C. nigra	Black stork	II	7/1/75
Egretta garzetta (all parts and derivatives)	Little egret	III (Ghana)	2/26/76
Ephippiorhynchus senegalensis (all parts and derivatives).	Saddlebill stork	III (Ghana)	2/26/76
Geronticus calvus	Southern bald ibis	II	7/1/75
G. eremita	Hermit ibis	I	6/28/79
Hagedashia hagedash (all parts and derivatives).	Hadada ibis	III (Ghana)	2/26/76
Lampribis rara (all parts and derivatives)	Spotted-breasted ibis	III (Ghana)	2/26/76
Leptoptilos crumeniferus (all parts and derivatives).	Marabou stork	III (Ghana)	2/26/76
Nipponia nippon	Japanese crested ibis	I	7/1/75
Phoenicoparrus andinus	Andean flamingo	II	7/1/75
P. jamesi	James flamingo	II	7/1/75
Phoenicopterus ruber chilensis	Chilean flamingo	II	7/1/75
P. ruber ruber	American flamingo	II	6/28/79
Platalea leucorodia	White spoonbill	II	7/1/75
Threskiornis aethiopicus (all parts and derivatives).	Sacred ibis	III (Ghana)	2/26/76
Order Anseriformes:	Ducks, Geese, Swans, Screamers:		
Anatidae, all species in family native to Ghana (all parts and derivatives).		III	2/26/76
Anas aucklandica aucklandica	Auckland Island flightless teal	II	7/1/75
A. aucklandica chlorotis	New Zealand brown teal	II	7/1/75
A. aucklandica nesiotis	Campbell Island flightless teal	I	7/1/75
A. bernieri	Madagascar teal	II	7/1/75
A. laysanensis	Laysan duck	I	7/1/75
A. oustaleti	Marianas mallard	I	7/1/75
Anser albifrons gambelli	Tule goose	II	7/1/75
Branta canadensis leucopareia	Aleutian goose	I	7/1/75
B. ruficollis	Red-breasted goose	II	7/1/75
B. sandvicensis	Hawaiian goose, Nene	I	7/1/75
Cairina scutulata	White-winged duck	I	7/1/75

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Coscoroba coscoroba	Coscoroba	II	7/1/75
Cygnus bewickii jankowski	Jankowski's swan	II	7/1/75
C. melanocoryphus	Black-necked swan	II	7/1/75
Dendrocygna arborea	Cuban tree duck, West Indian whistling duck.	II	7/1/75
Rhodonessa caryophyllacea	Pink-headed duck	I	7/1/75
Sarkidiornis melanotos	Comb duck	II	7/1/75
Order Falconiformes:	Hawks, Falcons, Vultures, Eagles:		
All species except Cathartidae and those species in app. I or with earlier date in app. II.	All species except New world vultures and species in app. I.	II	6/28/79
Accipiter gentilis	Northern goshawk	II	2/4/77
A. gundlachii	Gundlach's hawk	II	2/4/77
A. nisus	European sparrow hawk	II	2/4/77
Accipitridae spp. (all South American populations).	Hawks, Harriers	II	10/28/76
Aegypius monachus	European black vulture, Cinereous vulture.	II	2/4/77
Aquila spp., all species except that in app. I or with earlier date in app. II.	Eagles	II	2/4/77
A. chrysaetos	Golden eagle	II	7/1/75
A. heliaca	Imperial eagle	I	2/4/77
Chondrohierax wilsonii	Cuban hook-billed kite	I	2/4/77
Circaetus spp	Snake eagles	II	2/4/77
Circus spp	Harriers	II	2/4/77
Falconidae, all species in family except those in app. I.	Falcons, Caracaras	II	7/1/75
Falco araea	Seychelles kestrel	I	7/1/75
F. newtoni aldabranus	Aldabra kestrel	I	7/1/75
F. peregrinus	Peregrine falcon	I	7/1/75
F. punctatus	Mauritius kestrel	I	7/1/75
F. rusticolus	Gyrfalcon	I	7/1/75
Gymnogyps californianus	California condor	I	7/1/75
Gypaetus barbatus	Lammergeier	II	2/4/77
Gyps fulvus	Griffon vulture	II	2/4/77
Haliaeetus spp. (except species in app. I)	Sea and fish eagles	II	2/4/77
H. albicilla (except subspecies listed below)	White-tailed eagle	I	2/4/77
H. albicilla greenlandicus	Greenland white-tailed sea eagle	I	7/1/75
H. leucocephalus (except population listed below).	Bald eagle	I	2/4/77
H. leucocephalus leucocephalus	Southern bald eagle (Subspecies no longer recognized as valid).	I	7/1/75
Harpia harpyja	Harpy eagle	I	7/1/75
Harpyopsis novaeguineae	New Guinea harpy eagle	II	2/4/77
Milvus milvus	Red kite	II	2/4/77
Pandion haliaetus	Osprey	II	2/4/77
Pithecophaga jefferyi	Monkey-eating eagle	I	7/1/75
Sagittarius serpentarius	Secretary bird	II	2/26/76
Vultur gryphus	Andean condor	I	7/1/75
Order Galliformes:	Pheasants, Curassows, Megapodes, Hoatzins:		
Agelastes meleagrides (all parts and derivatives).	White-breasted guineafowl	III	2/26/76
Argusianus argus	Great argus pheasant	II	7/1/75
Catreus wallichii	Cheer pheasant	I	7/1/75
Colinus virginianus ridgwayi	Masked bobwhite	I	7/1/75
Crax blumenbachii	Red-billed curassow	I	7/1/75
C. rubra (all parts & derivatives)	Great curassow	III (Costa Rica).	10/28/76
Crossoptilon crossoptilon	White eared pheasant	I	7/1/75
C. mantchuricum	Browneared pheasant	I	7/1/75
Cyrtonyx montezumae mearnsi (Mexico population).	Mearn's harlequin quail	II	7/1/75
C. montezumae	Harlequin quail	II	7/1/75
Francolinus ochropectus	Tadjoura francolin	II	7/1/75
F. swierstrai	Sweirstra's francolin	II	7/1/75
Gallus sonneratii	Gray jungle fowl	II	7/1/75
Ithaginus cruentus	Blood pheasant	II	7/1/75
Lophophorus impeyanus	Himalayan monal	I	7/1/75
L. lhuysii	Chinese monal	I	7/1/75
L. sclateri	Sclater's monal	I	7/1/75
Lophura edwardsi	Edward's pheasant	I	7/1/75
L. imperialis	Imperial pheasant	I	7/1/75
L. swinhoii	Swinhoe's pheasant	I	7/1/75
Lyrurus mlokosiewiczi	Caucasian black grouse	II	2/4/77
Macrocephalon maleo	Maleo	I	7/1/75
Megapodius freycinet abbotti	Abbott's megapode or incubator bird	II	7/1/75
M. freycinet nicobariensis	Nicobar megapode	II	7/1/75
Mitu (=Crax) mitu mitu	Mitu, Razor-billed curassow	I	7/1/75
Oreophasis derbianus	Horned guan	I	7/1/75
Pavo muticus	Green peafowl	II	2/4/77
Pipile (=Aburria) jacutinga	Black-fronted piping-guan	I	7/1/75
P. (=Abburia) pipile pipile	Trinidad white-headed curassow	I	7/1/75
Polyplectron bicalcaratum	Gray peacock pheasant	II	7/1/75
P. emphanum	Palawan peacock pheasant	I	7/1/75
P. germaini	Germain's peacock pheasant	II	7/1/75
P. malacense	Malaysian peacock pheasant	II	7/1/75
Syrmaticus ellioti	Elliot's pheasant	I	7/1/75
S. humiae	Bar-tailed pheasant	I	7/1/75
S. mikado	Mikado pheasant	I	7/1/75
Tetraogallus caspius	Caspian snowcock	I	7/1/75
T. tibetanus	Tibetan snowcock	I	7/1/75
Tragopan blythii	Blyth's tragopan	I	7/1/75

Species	Common name	Appendix	Date listed (month/day/year)
T. caboti	Cabot's tragopan	I	7/1/75
T. melanocephalus	Western tragopan	I	7/1/75
T. satyra (*all parts and derivatives*)	Satyr tragopan	III (Nepal)	11/16/75
Tympanuchus cupido attwateri	Attwater's greater prairie chicken	I	7/1/75
Order Gruiformes:	Cranes, Rails, Bustards:		
Balearica regulorum	Crowned crane	II	7/1/75
Chlamydotis undulata	Houbara bustard	I	7/1/75
Choriotis nigriceps	Great Indian bustard	I	7/1/75
Eupodotis bengalensis	Bengal floricon	I	7/1/75
Gallirallus australis hectori	Eastern weka rail	II	7/1/75
Grus americana	Whooping Crane	I	7/1/75
G. canadensis nesiotes	Cuba sandhill crane	I	7/1/75
G. canadensis pratensis	Florida sandhill crane	II	7/1/75
G. canadensis pulla	Mississippi sandhill crane	I	7/1/75
G. japonesis	Manchurian crane	I	7/1/75
G. leucogeranus	Siberian white crane	I	7/1/75
G. monacha	Hooded crane	I	7/1/75
G. nigricollis	Black necked crane	I	7/1/75
G. vipio	White-naped crane	I	7/1/75
Otis tarda	Great bustard	II	7/1/75
Pedionomus torquatus	Collared hemipode	II	6/28/79
Rhynochetos jubatus	Kagu	I	7/1/75
Tricholimnas sylvestris	Lord Howe wood rail	I	7/1/75
Turnix melanogaster	Black-breasted button quail	II	6/28/79
Order Charadriiformes:	Shorebirds, Gulls, Auks:		
Larus brunnicephalus	Brown-headed gull	II	7/1/75
L. relictus	Relict gull	I	7/1/75
Numenius borealis	Eskimo curlew	I	7/1/75
N. minutus	Little whimbrel	II	7/1/75
N. tenuirostris	Slender-billed curlew	II	7/1/75
Tringa guttifer	Nordmann's greenshank	I	7/1/75
Order Columbiformes:	Pigeons, Doves, Sand-grouse:		
Caloenas nicobarica	Nicobar pigeon	I	6/28/79
C. nicobarica pelewensis	Nicobar pigeon	I	7/1/75
Columbidae; all species in family native to Ghana (all parts and derivatives).	Pigeons	III (Ghana)	2/26/76
Ducula mindorensis	Mindoro imperial pigeon	I	7/1/75
Gallicolumba luzonica	Bleeding heart pigeon	II	7/1/75
Goura cristata	Common crowned pigeon	II	7/1/75
G. scheepmakeri	Maroon-breasted crowned pigeon	II	7/1/75
G. victoria	Victoria crowned pigeon	II	7/1/75
Nesoenas (=*Columba*) *mayeri* (all parts and derivatives).	Pink pigeon	III (Mauritius)	12/4/75
Order Psittaciformes:	Parrots, Parakeets, Macaws, Lories:		
Amazona guildingii	St. Vincent parrot	I	7/1/75
A. imperialis	Imperial parrot	I	7/1/75
A. leucocephala	Cuban parrot	I	7/1/75
A. pretrei pretrei	Red-spectacled parrot	I	7/1/75
A. rhodocorytha	Red-browed parrot	I	7/1/75
A. versicolor	St. Lucia parrot	I	7/1/75
A. vinacea	Vinaceous parrot	I	7/1/75
A. vittata	Puerto Rican parrot	I	7/1/75
Anodorhynchus glaucus	Glaucous macaw	I	7/1/75
A. leari	Indigo macaw	I	7/1/75
Ara ambigua (all parts and derivatives)	Great green macaw	III (Costa Rica).	10/28/76
A. macao (all parts and derivatives)	Scarlet macaw	III (Costa Rica).	10/28/76
Aratinga guarouba	Golden conure	I	7/1/75
Cacatua (*Kakatoe*) *tenuirostris*	Slender-billed cockatoo	II	2/4/77
Calyptorhynchus lathami	Glossy cockatoo	II	2/4/77
Coracopsis nigra barklyi	Seychelles vasa parrot	II	7/1/75
Cyanoliseus patagonus byroni	Patagonian conure	II	6/28/79
Cyanopsitta spixii	Red-capped parrot	I	7/1/75
Cyanoramphus auriceps forbesi	Forbe's or yellow-fronted parakeet	I	7/1/75
C. malherbi	Orange-fronted parakeet	II	7/1/75
C. novaezelandiae	New Zealand or red-fronted parakeet	I	7/1/75
C. unicolor	Antipodes green parakeet	II	7/1/75
Eunymphicus cornutus	Horned parakeet	II	7/1/75
Geopsittacus occidentalis	Australian night parrot	I pe	7/1/75
Neophema chrysogaster	Orange-bellied parakeet	I	7/1/75
N. splendida	Scarlet-chested parakeet	II	7/1/75
Opopsitta diophthalma coxeni	Double-eyed fig parrot	II	2/4/77
Pezoporus wallicus	Ground parrot	I	2/4/77
Pionopsitta pileata	Red-capped or pileated parrot	I	7/1/75
Poicephalus robustus	Cape parrot	II	7/1/75
Polytelis alexandrae	Princess parrot	II	2/4/77
Probosciger aterrimus	Great black cockatoo	II	7/1/75
Prosopoeia personata	Masked or yellow-breasted musk parrot	II	7/1/75
Psephotus chrysopterygius	Golden-shouldered parakeet	I	7/1/75
P. pulchemimus	Paradise parakeet	I pe	7/1/75
P. (*Northiella*) *haematogaster narethae*	Blue-bonnet parakeet	II	2/4/77
Psittacidae, all species in family native to Ghana (all parts and derivatives).	Parrots	III (Ghana)	2/26/76
Psittacula krameri echo	Mauritius ring-necked parakeet	I	7/1/75
Psittacus erithacus princeps	Principe parrot	I	7/1/75
Pyrrhura cruentata	Blue-throated or ochre-marked parakeet	I	7/1/75
Rhynchopsitta pachyrhyncha	Thick-billed parrot	I	7/1/75
Strigops habroptilus	Kakapo or owl parrot	I	7/1/75
Tanygnathus lucionensis	Blue-naped parrot	II	2/4/77
Order Cuculiformes:	Cuckoos, Plantain-eaters:		
Gallirex (=*Tauraco*) *porphyreolophus*	Violet-crested turaco	II	7/1/75
Musophagidae, all species in family native to	Turacos	III (Ghana)	2/26/76

Species	Common name	Appendix	Date listed (month/day/year)
Ghana except species in app. II (all parts and derivatives).			
Tauraco corythaix	Knysna loury	II	2/4/77
Order Strigiformes:	Owls:		
All species except those in app. I or with earlier date in app. II.		II	6/28/79
Athene blewitti	Forest little owl, Forest spotted owlet	I	6/28/79
Bubo bubo	Eurasian eagle owl	II	2/4/77
Ninox novaeseelandiae royana	Great hawk owl	I	2/4/77
N. squamipila natalis	Moluccan hawk owl	I	2/4/77
Nyctea scandiaca	Snowy owl	II	2/4/77
Otus gurneyi	Giant scops owl	I	7/1/75
O. nudipes newtoni	Virgin Island screech owl	II	7/1/75
Strigidae, all species in family native to Ghana.	Owls	II	2/26/76
Strix butleri	Hume's wood owl	II	2/4/77
S. nebulosa	Great gray owl	II	11/16/75
Tyto soumagnei	Madagascar owl	I	2/4/77
Tytonidae, all species in family native to Ghana.	Owls	II	2/26/76
Order Apodiformes:	Swifts, Hummingbirds:		
Ramphodon (=Glaucis) dohrnii	Hook-billed hermit	I	7/1/75
Order Trogoniformes:	Trogons:		
Pharomachrus mocinno costaricensis	Central resplendent quetzal	I	7/1/75
P. mocinno mocinno	Northern resplendent quetzal	I	7/1/75
Order Coraciiformes:	Hornbills, Kingfishers, Rollers, Bee-eaters, Motmots:		
Aceros narcondami	Narcondam hornbill	II	7/1/75
Buceros bicornis	Great hornbill	II	7/1/75
B. bicornis homrai	Great Indian hornbill, Great pied hornbill	I	7/1/75
B. hydrocorax hydrocorax	Luzon-Marinduque rufous hornbill	II	7/1/75
B. rhinoceros rhinoceros	Malay rhinoceros hornbill	II	7/1/75
Rhinoplax vigil	Helmeted hornbill	I	7/1/75
Order Piciformes:	Woodpeckers, Toucans, Jacamars, Barbets:		
Campephilus imperialis	Imperial woodpecker	I	7/1/75
Dryocopus javensis richardsi	Tristam's white-bellied woodpecker	I	7/1/75
Picus squamatus flavirostris	Green scaly-bellied woodpecker	II	7/1/75
Order Passeriformes:	Perching birds:		
Atrichornis clamosa	Noisy scrub-bird	I	7/1/75
Bebrornis rodericanus (all parts and derivatives).	Rodriquez Island warbler	III (Mauritius)	12/4/75
Cotinga maculata	Banded cotinga	I	7/1/75
Dasyornis brachypterus longirostris	Western bristlebird	I	7/1/75
D. broadbenti littoralis	Western rufous bristlebird	I pe	7/1/75
Emblema oculata	Red-eared firetail	II	6/28/79
Fringillidae, all species in family native to Ghana (all parts and derivatives).	Finches	III (Ghana)	2/26/76
Gubernatrix cristata (all parts and derivatives)	Yellow cardinal	III (Uruguay)	7/14/76
Leucopsar rothschildi	Rothschild's starling or myna	I	7/1/75
Meliphaga cassidix	Helmeted honey easter	I	7/1/75
Muscicapa (=Niltava) ruecki	Rueck's blue fly-catcher or niltava	II	7/1/75
Paradiseidae, all species in family	Birds of paradise	II	7/1/75
Picathartes gymnocephalus	Bare-headed or yellow-headed rock fowl	I	7/1/75
P. oreas	Gray-necked or red-headed rock fowl	I	7/1/75
Pitta brachyura nympha	Fairy pitta, Blue-winged pitta	II	7/1/75
P. kochi	Koch's pitta	I	7/1/75
Ploceidae, all species in family native to Ghana (all parts and derivatives).	Weaverbirds, weaver finches	III (Ghana)	2/26/76
Pseudochelidon sirintarae	White-eyed river martin	II	7/1/75
Psophodes nigrogularis	Western whipbird	II	7/1/75
Rupicola peruviana	Andean cock-of-the-rock	II	7/1/75
R. rupicola	Guianan cock-of-the-rock	II	7/1/75
Spinus cucullatus	Red siskin	I	7/1/75
S. yarrellii	Yellow-faced siskin	II	7/1/75
Tchitrea (Terpsiphone) bourbonnensis (all parts and derivatives).	Coq de Bois, Mascarene paradise fly-catcher.	III (Mauritius)	12/4/75
Xanthopsar flavus (all parts and derivatives)	Saffron-cowled blackbird	III (Uruguay)	7/14/76
Xipholena atropurpurea	White-winged cotinga	I	7/1/75
Zosterops albogularis	White-breasted or Norfolk Island silver-eye.	I	7/1/75
CLASS REPTILIA:	REPTILES:		
Order Crocodylia:	Crocodiles, Alligators, Caimans, Gavials:		
Alligatoridae, all species in family except those in app. I or with earlier date in app. II.	Alligators, caimans	II	2/4/77
Alligator mississippiensis	American alligator	II	7/1/75
A. sinensis	Chinese alligator	I	7/1/75
Caiman crocodilus apaporiensis	Apaporis River caiman	I	7/1/75
C. crocodilus crocodilus	Common caiman	II	7/1/75
C. crocodilus yacare (=C. yacare)	Yacare	II	7/1/75
C. crocodilus fuscus (Including *C. crocodilus chiapasius*).	Brown caiman	II	7/1/75
C. latirostris	Broad-snouted caiman	I	7/1/75
Crocodylidae, all species in family except those in app. I or with earlier date in app. II.	Crocodiles	II	2/4/77
Crocodylus acutus, except population of United States.	American crocodile	II	7/1/75
C. acutus, United States population	American crocodile	I	7/1/75
C. cataphractus	African slender-snouted crocodile	I	7/1/75
C. intermedius	Orinoco crocodile	I	7/1/75
C. johnsoni	Johnson's crocodile	II	7/1/75
C. moreletii	Morelet's crocodile	I	7/1/75
C. niloticus	Nile crocodile	I	7/1/75
C. novaeguineae (except subspecies listed below).	New Guinea or freshwater crocodile	II	7/1/75

Species	Common name	Appendix	Date listed (month/day/year)
C. novaeguineae mindorensis	Philippine crocodile	I	7/1/75
C. palustris kimbula	Ceylon mugger crocodile	I	7/1/75
C. palustris palustris	Mugger crocodile	I	7/1/75
C. porosus, except population of Papua New Guinea.	Saltwater crocodile	I	7/1/75
C. porosus, Papua New Guinea population	Saltwater crocodile	II	7/1/75
C. rhombifer	Cuban crocodile	I	7/1/75
C. siamensis	Siamese crocodile	I	7/1/75
Gavialis gangeticus	Gavial, gharial	I	7/1/75
Melanosuchus niger	Black caiman	I	7/1/75
Osteolaemus tetraspis (except subspecies listed below).	Dwarf crocodile	I	2/4/77
O. tetraspis osborni	Dwarf crocodile	I	7/1/75
O. tetraspis tetraspis	Dwarf crocodile	I	7/1/75
Paleosuchus trigonatus	Smooth-fronted caiman	II	7/1/75
Tomistoma schlegelii	Tomistoma, False gavial	I	7/1/75
Order Testudinata:	Turtles, Tortoises:		
Batagur baska	River terrapin, Tuntong	I	7/1/75
Caretta caretta	Loggerhead sea turtle	I	7/1/75
Chelonia depressa	Flat-back sea turtle	II	7/1/75
C. mydas, except Australian population	Green sea turtle	I	7/1/75
C. mydas, Australian population	Green sea turtle	II	7/1/75
Cheloniidae, all species in family except those in app. I or with earlier date in app. II.	Sea turtles	II	2/4/77
Chersina (=Testudo) spp.	Bow-sprit tortoises	II	7/1/75
Clemmys muhlenbergi	Bog turtle	II	7/1/75
Dermochelys coriacea	Leatherback sea turtle	I	7/1/75
Eretmochelys imbricata	Hawksbill sea turtle	I	7/1/75
Geochelone spp. (except species listed below).	Land tortoises	II	7/1/75
G. (=Testudo) elephantopus	Galapagos tortoise	I	7/1/75
G. (=Testudo) radiata	Madagascar radiated tortoise	I	7/1/75
G. (Testudo) yniphora	Angulated tortoise	I	7/1/75
Geoclemys (=Damonia) hamiltoni	Spotted pond turtle	I	7/1/75
Geoemyda (=Melanochelys or Nicoria) tricarinata.	Three keeled Asian turtle	I	7/1/75
Gopherus spp. (except species listed below)	Gopher tortoises	II	7/1/75
G. flavomarginatus	Bolson tortoise	I	7/1/75
Homopus spp.	African parrot-beaked tortoises	II	7/1/75
Kachuga tecta tecta	Indian sawback turtle	I	7/1/75
Kinixys spp.	Hinged-back tortoise	II	7/1/75
Lepidochelys kempi	Kemp's or Atlantic ridley sea turtle	I	7/1/75
L. olivacea	Olive ridley sea turtle	I	7/1/75
Lissemys punctata punctata	Indian flap-shell tortoise	I	7/1/75
Malacochersus spp.	Pancake tortoises	II	7/1/75
Morenia ocellata	Burmese peacock turtle	I	7/1/75
Pelomedusa subrufa (all parts and derivatives).	Helmeted terrapin	III (Ghana)	2/26/76
Pelusios spp. all species native to Ghana (all parts and derivatives).	African mud turtles	III (Ghana)	2/26/76
Podocnemis spp.	South American turtles	II	7/1/75
Psammobates geometrica	Geometric turtle	I	2/4/77
Pseudemydura umbrina	Short-necked swamp turtle	I	7/1/75
Pyxis spp	Madagascar spider tortoises	II	7/1/75
Terrapene coahuila	Aquatic box turtle	I	7/1/75
Testudinidae, all species except those in app. I or with earlier date in app. II.	Land tortoises	II	2/4/77
Testudo spp.	Land tortoises	II	7/1/75
Trionyx ater	Cuatro Cienegas softshell turtle	I	7/1/75
T. gangeticus	Indian softshell turtle	I	7/1/75
T. hurum	Peacock softshell turtle	I	7/1/75
T. nigricans	Black softshell turtle	I	7/1/75
T. triunguis (all parts and derivatives)	Three-clawed turtle	III (Ghana)	2/26/76
Order Rhynchocephalia:	Tuatara:		
Sphenodon punctatus	Tuatara	I	7/1/75
Order Squamata:	Lizards, Snakes:		
Acrantophis spp	Madagascar boas	I	2/4/77
Amblyrhynchus cristatus	Galapagos marine iguana	II	7/1/75
Boidae, all species except those in app. I or with earlier date in app. II.	Boa constrictors, Pythons	II	2/4/77
Bolyeria spp	Round Island boa	I	2/4/77
Casarea spp	Round Island boa	I	2/4/77
Chamaeleo spp.	Chamaeleons	II	2/4/77
Cnemidophorus hyperythrus	Orange-throated whiptail lizard	II	7/1/75
Conolophus spp. (except species listed below).	Land lizards	II	2/4/77
C. pallidus	Barrington Island land lizard	II	7/1/75
C. subcristatus	Galapagos land iguana	II	7/1/75
Constrictor constrictor	Boa constrictor	II	7/1/75
Crocodilurus lacertinus	Dragon lizardet	II	2/4/77
Cyclagras (=Hydrodynastes) gigas	South American false water cobra	II	7/1/75
Cyclura spp.	Ground iguanas	II	2/4/77
Cyrtodactylus serpensinsula	Serpent Island gecko	II	2/4/77
Dracaena guianensis	Caiman lizard	II	2/4/77
Elachistodon westermanni	Indian egg-eating snake	II	7/1/75
Epicrates cenchris cenchris	Rainbow boa	II	7/1/75
E. inornatus	Puerto Rican boa	I	2/4/77
Eunectes notaeus	Yellow anaconda	II	7/1/75
E. subflavus	Jamaican boa	I	7/1/75
Heloderma spp. (except species listed below)	Beaded lizards, Gila monster	II	2/4/77
H. horridum	Beaded lizard	II	7/1/75
H. suspectum	Gila monster	II	7/1/75
Iguana spp	Iguanas	II	2/4/77

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Paradelma orientalis	Snake lizard	II	2/4/77
Pheisuma spp	Day geckos	II	2/4/77
Phrynosoma coronatum blainvillei	San Diego horned lizard	II	7/1/75
Pseudoboa (=Clelia) cloelia	Mussurana snake	II	7/1/75
Python spp. (except subspecies listed below).	Pythons	II	7/1/75
P. molurus molurus	Indian python	I	7/1/75
Sanzinia madagascariensis	Tree boa	I	2/4/77
Thamnophis elegans (=couchi) hammondi	Two-striped garter snake	II	7/1/75
Tupinambis spp	Tegu lizards	II	2/4/77
Uromastyx spp	Spiny-tailed lizards	II	2/4/77
Varanus spp. (all species except those in app. I).	Monitor lizards	II	7/1/75
V. bengalensis	Bengal monitor	I	7/1/75
V. flavescens	Yellow monitor	I	7/1/75
V. griseus	Desert monitor	I	7/1/75
V. komodoensis	Komodo Island monitor, Komodo dragon	I	7/1/75
CLASS AMPHIBIA:	AMPHIBIANS:		
Order Caudata:	Salamanders:		
Ambystoma dumerilii	Lake Patzcuaro salamander	II	7/1/75
A. lermaensis	Lake Lerma salamander	II	7/1/75
A. mexicanum	Axolotl	II	7/1/75
Andrias (=Megalobatrachus) davidianus	Chinese giant salamander	I	7/1/75
A. (=Megalobatrachus) japonicus	Japanese giant salamander	I	7/1/75
Order Anura:	Frogs, Toads:		
Atelopus varius zeteki	Panamanian golden frog	I	7/1/75
Bufo periglens	Monteverde toad	I	7/1/75
B. retiformis	Sonoran green toad	II	7/1/75
B. superciliaris	Cameroon toad	I	7/1/75
Nectophrynoides spp	African viviparous toads	I	7/1/75
CLASS OSTEICHTHYES:	BONY FISHES:		
Order Acipenseriformes:	Sturgeons:		
Acipenser brevirostrum	Short-nosed sturgeon	I	7/1/75
A. fulvescens	Lake sturgeon	II	7/1/75
A. oxyrhynchus	Atlantic sturgeon	II	7/1/75
A. sturio	Baltic sturgeon	II	7/1/75
Order Osteoglossiformes:	Bonytongues:		
Arapaima gigas	Arapaima	II	7/1/75
Scleropages formosus	Asiatic bonytongue	I	7/1/75
Order Salmoniformes:	Salmon, Trout:		
Coregonus alpenae	Longjaw cisco	I	7/1/75
Salmo chrysogaster	Mexican golden trout	II	7/1/75
Stenodus leucichthys leucichthys	Beloribitsa	II	7/1/75
Order Cypriniformes:			
Chasmistes cujus	Cui-ui	I	7/1/75
Plagopterus argentissimus	Woundfin	II	7/1/75
Probarbus jullieni	Ikan temolek, Pla eesok	I	7/1/75
Ptychocheilus lucius	Colorado River squawfish	II	7/1/75
Order Atheriniformes:	Livebearers:		
Cynolebias constanciae	Annual tropical killifish	II	7/1/75
C. marmoratus	Annual tropical killifish	II	7/1/75
C. minimus	Annual tropical killifish	II	7/1/75
C. opalescens	Annual tropical killifish	II	7/1/75
C. splendens	Annual tropical killifish	II	7/1/75
Xiphophorus couchianus	Monterey platyfish	II	7/1/75
Order Coelacanthiformes:	Coelacanth:		
Latimeria chalumnae	Coelacanth, Gombessa	II	7/1/75
Order Ceratodiformes:	Lungfishes:		
Neoceratodus forsteri	Australian lungfish	II	7/1/75
Order Siluriformes:	Catfishes:		
Pangasianodon gigas	Thailand giant catfish	I	7/1/75
Order Perciformes:	Perch-like fishes:		
Cynoscion macdonaldi	Totoaba	I	2/4/77
Stizostedion vitreum glaucum	Blue pike	I	7/1/75
PHYLUM MOLLUSCA:	MOLLUSCS:		
Class Pelecypoda (=Bivalvia):	Clams, Mussels:		
Conradilla caelata	Birdwing pearly mussel	I	7/1/75
Cyprogenia aberti	Edible pearly mussel	II	7/1/75
Dromus dromas	Dromedary pearly mussel	II	7/1/75
Epioblasma (=Dysnomia or Plagiola) florentina curtisi.	Curtis' pearly mussel	I	7/1/75
E. florentina florentina	Yellow-blossom pearly mussel	I	7/1/75
E. sampsoni	Sampson's pearly mussel	I	7/1/75
E. sulcata perobliqua	White cat's paw mussel	I	7/1/75
E. torulosa gubernaculum	Green-blossom pearly mussel	I	7/1/75
E. torulosa rangiana	Tan-blossom pearly mussel	II	7/1/75
E. torulosa torulosa	Tuberculed-blossom pearly mussel	I	7/1/75
E. turgidula	Turgid-blossom pearly mussel	I	7/1/75
E. walkeri	Brown-blossom pearly mussel	I	7/1/75
Fusconaia cuneolus	Fine-rayed pigtoe mussel	I	7/1/75
F. edgariana	Shiny pigtoe mussel	I	7/1/75
F. subrotunda	Long solid mussel	II	7/1/75
Lampsilis brevicula	Ozark lamp pearly mussel	I	7/1/75
L. higginsi	Higgin's eye mussel	I	7/1/75
L. orbiculata orbiculata	Pink mucket mussel	I	7/1/75
L. satura	Plain pocketbook mussel	I	7/1/75
L. virescens	Alabama lamp pearly mussel	I	7/1/75
Lexingtonia dolabelloides	Slab-side pearly mussel	II	7/1/75
Mytilus chorus	Chilean mussel	II	6/28/79
Plethobasus cicatricosus	White wartyback mussel	I	7/1/75
P. cooperianus	Orange-footed pimpleback mussel	I	7/1/75
Pleurobema clava	Club pearly mussel	II	7/1/75
P. plenum	Rough pigtoe mussel	I	7/1/75
Potamilus (=Proptera) capax	Fat pocketbook mussel	I	7/1/75

Species	Common name	Appendix	Date listed (month/day/year)
Quadrula intermedia	Cumberland monkey-face mussel	I	7/1/75
Q. sparsa	Appalachian monkey-face mussel	I	7/1/75
Toxolasma (=Carunculina) cylindrella	Pale lilliput pearly mussel	I	7/1/75
Unio (=Megalonaias) nickliniana	Nicklin's pearly mussel	I	7/1/75
U. (=Lampsilis or Cyrtonaias) tampicoensis tecomatensis.	Tampico pearly mussel	I	7/1/75
Villosa (=Micromya) trabalis	Cumberland bean mussel	I	7/1/75
Class Gastropoda:	Snails:		
Coahuilix hubbsi	Coahuilix de Hubbs Caracol	II	7/1/75
Cochliopina milleri	Cochliopina de Miller Caracol	II	7/1/75
Durangonella coahuilae	Durangonella de Coahuila Caracol	II	7/1/75
Mexipyrgus carranzae	Mexipyrgus de Carranza Caracal	II	7/1/75
M. churinceanus	Mexipyrgus de Churince Caracol	II	7/1/75
M. escobedae	Mexipyrgus de Escobeda Caracol	II	7/1/75
M. lugoi	Mexipyrgus de Lugo Caracol	II	7/1/75
M. mojarralis	Mexipyrgus del Oeste del Mojarral Caracol.	II	7/1/75
M. multilineatus	Mexipyrgus del Este del Mojarral Caracol.	II	7/1/75
Mexithauma quadripaludium	Mexithauma de Cuatro Cienegas Caracol.	II	7/1/75
Nymphophilus minckleyi	Nymphophilus de Minckley Caracol	II	7/1/75
Paludiscala caramba	Paludiscala Maravillosa Caracol	II	7/1/75
Papustyla (=Papuina) pulcherrima	Manus Island tree snail	II	7/1/75
Paraphanta spp. (New Zealand species only)	New Zealand amber snails	II	7/1/75
PHYLUM ARTHROPODA:	ARTHROPODS:		
Class Insecta:	Insects:		
Ornithoptera spp	Birdwing butterflies	II	2/16/79
O. alexandrae	Birdwing butterfly	II	2/4/77
O. allotei	Birdwing butterfly	II	2/4/77
O. chimaera	Birdwing butterfly	II	2/4/77
O. goliath	Birdwing butterfly	II	2/4/77
O. meridionalis	Birdwing butterfly	II	2/4/77
O. paradisea	Paradise birdwing butterfly	II	2/4/77
O. victoriae	Queen Victoria's birdwing butterfly	II	2/4/77
Parnassius apollo	Mountain apollo butterfly	II	2/4/77
P. apollo apollo	Mountain apollo butterfly	II	7/1/75
Trogonoptera spp	Birdwing butterflies	II	2/16/79
Troides spp	Birdwing butterflies	II	2/16/79
FLORA:	PLANTS:		
Family Apocynaceae:	Dogbanes:		
Pachypodium spp	Elephant's trunk	II	7/1/75
Family Araceae:	Arums:		
Alocasia sanderana		I	7/1/75
A. zebrina		I	7/1/75
Family Araliaceae:	Ginsengs:		
Panax quinquefolius (roots)	American ginseng	II	7/1/75
Family Araucariaceae:	Monkey-puzzle trees:		
Araucaria araucana (timber), all populations except that of Chile.	Monkey-puzzle tree	II	7/1/75
A. araucana, population of Chile	Monkey-puzzle tree	I	7/1/75
Family Asclepiadaceae:			
Ceropegia spp	Ceropegias	II	6/28/79
Frerea indica		II	6/28/79
Family Byblidaceae:			
Byblis spp	Byblis, Rainbow plants	II	6/28/79
Family Cactaceae:	Cacti:		
All species in the Americas		II	7/1/75
Rhipsalis spp	Mistletoe cacti	II	7/1/75
Family Caryocaraceae:	Caryocars:		
Caryocar costaricense		I	7/1/75
Family Caryophyllaceae:	Pinks:		
Gymnocarpos przewalskii		I	7/1/75
Melandrium mongolicum		I	7/1/75
Silene mongolica		I	7/1/75
Stellaria pulvinata		I	7/1/75
Family Cephalotaceae:			
Cephalotus follicularis	Albany pitcher plant	II	6/28/79
Family Chloanthaceae:			
Populations of all species in Australia	Lambs tails	II	6/28/79
Family Compositae—(=Asteraceae):	Composites, Asters:		
Saussurea lappa (roots)	Costas	II	7/1/75
Family Cupressaceae:	Cypresses:		
Fitzroya cupressoides	Fitzroya, Alerce	I	7/1/75
Pilgerodendron uviferum	Pilgerodendron	I	7/1/75
Family Cyatheaceae:	Tree ferns:		
All species in the family (trunks) except those with earlier date.		II	2/4/77
Cyathea (Hemitelia) capensis (trunks)		II	7/1/75
C. dregi (trunks)		II	7/1/75
C. mexicana (trunks)		II	7/1/75
C. (Alsophila) salvinii (trunks)		II	7/1/75
Family Cycadaceae:	Cycads:		
All species except that listed in app. I (trunks)		II	2/4/77
Microcycas calocoma	Palma Corcho, Microcycas	I	7/1/79
Family Dicksoniaceae:			
All species in the family (trunks)		II	2/4/77
Family Didiereaceae:			
All species in the family		II	2/4/77
Family Dioscoreaceae:	Yams:		
Dioscorea deltoidea (roots)		II	7/1/75
Family Euphorbiaceae:	Spurges:		
Euphorbia spp. excluding non-succulent species.	Euphorbias	II	7/1/75

Species	Common name	Appendix	Date listed (month/day/year)
Family Fagaceae:	Beeches:		
Quercus copeyensis (timber)		II	7/1/75
Family Gentianaceae:	Gentians:		
Prepusa hookeriana	Scarlet-flowered prepusa	I	7/1/75
Family Gnetaceae:	Gnetums:		
Gnetum montanum (all parts and derivatives)		III (Nepal)	11/16/75
Family Haemodoraceae:	Bloodworts:		
Anigozanthos spp.	Kangaroo paws	II	6/28/79
Macropidia fuliginosa	Black kangaroo paw	II	6/28/79
Family Humiriaceae:			
Vantanea barbourii		I	7/1/75
Family Juglandaceae:	Walnuts:		
Engelhardtia pterocarpa		I	7/1/75
Family Leguminosae—(=Fabaceae):	Peas, Pulse:		
Ammopiptanthus mongolicum		I	7/1/75
Cynometra hemitomophylla		I	7/1/75
Platymiscium pleiostachyum		I	7/1/75
Tachigalia versicolor		I	7/1/75
Thermopsis mongolica		II	7/1/75
Family Liliaceae:	Lilies, Aloes:		
Aloe spp., all species except those in app. I	Aloes	II	7/1/75
A. albida		I	7/1/75
A. pillansii		I	7/1/75
A. polyphylla	Spiral aloe	I	7/1/75
A. thorncroftii		I	7/1/75
A. vossii		I	7/1/75
Family Magnoliaceae:	Magnolias:		
Talauma hodgsonii (all parts and derivatives)		III (Nepal)	11/16/75
Family Melastomataceae:	Meadow-Beauties:		
Lavoisiera itambana		I	7/1/75
Family Meliaceae:	Mahoganies:		
Guarea longipetiola		I	7/1/75
Swietenia humilis timber		II	7/1/75
Family Moraceae:	Mulberries:		
Batocarpus costaricensis		I	7/1/75
Family Myracaceae:	Myrtles:		
Verticordia spp	Feather flowers	II	6/28/79
Family Orchidaceae:	Orchids:		
All species except those in app. I		II	7/1/75
Cattleya skinneri		I	7/1/75
C. trianae	Christmas orchid	I	7/1/75
Didiciea cunninghamii		I	7/1/75
Laelia jongheana		I	7/1/75
L. lobata		I	7/1/75
Lycaste virginalis var. *alba*	White nun	I	7/1/75
Peristeria elata	Holy Ghost	I	7/1/75
Renanthera imschoestiana		I	7/1/75
Vanda coerulea	Blue vanda	I	7/1/75
Family Palmae (Arecaceae):	Palms:		
Areca ipot		II	7/1/75
Chrysalidocarpus decipiens		II	2/4/77
C. lutescens	Yellow palm	II	2/4/77
Neodypsis decaryi		II	7/1/75
Phoenix hanceana var. *philippinensis*		II	7/1/75
Zalacca clemensiana		II	7/1/75
Family Papaveraceae:	Poppies:		
Meconopsis regia (all parts and derivatives)		III (Nepal)	11/16/75
Family Pinaceae:	Pines, Firs:		
Abies guatemalensis	Guatemalan fir	I	7/1/75
A. nebrodensis		I	7/1/75
Family Podocarpaceae:			
Podocarpus costalis		I	7/1/75
P. nerifolius (all parts and derivatives)		III (Nepal)	11/16/75
P. parlatorei	Parlatore's podocarp	I	7/1/75
Family Portulacaceae:	Portulacas:		
Anacampseros spp		II	7/1/75
Family Primulaceae:	Primroses:		
Cyclamen spp		II	7/1/75
Family Proteaceae:	Silk oaks:		
Banksia spp	Banksias	II	6/28/79
Conospermum spp	Smoke bushes	II	6/28/79
Dryandra formosa	Showy dryandra	II	6/28/79
D. polycephala		II	6/28/79
Orothamnus zeyheri	Marsh rose	I	7/1/75
Protea odorata		I	7/1/75
Xylomelum spp	Woody pears	II	6/28/79
Family Rubiaceae:	Madders:		
Balmea stormiae	Ayuque	I	7/1/75
Family Rutaceae:	Boronias, Rues:		
Boronia spp		II	6/28/79
Geleznowia verrucosa		II	6/28/79
Crowea spp	Crowea	II	6/28/79
Family Saxifragaceae—(Grossulariaceae):	Saxifrages:		
Ribes sardoum		I	7/1/75
Family Solanaceae:	Nightshades:		
Solanum sylvestre		II	7/1/75
Family Stangeriaceae:			
All species except that in app. I		II	2/4/77
Stangeria eriopus	Hottentot's head	I	7/1/75
Family Sterculiaceae:	Sterculias:		
Basiloxylon excelsum (timber)		II	7/1/75
Family Tetracentraceae:	Tetracentrons:		
Tetracentron spp. (all parts and derivatives)		III (Nepal)	11/16/75

Species	Common name	Appendix	Date listed (month/day/year)
Family Thymelaeaceae:			
Pimelea physodes	Qualup bell	II	6/28/79
Family Ulmaceae:	Elms:		
Celtis aetnensis		I	7/1/75
Family Verbenaceae:	Verbenas:		
Caryopteris mongolica		II	7/1/75
Family Welwitschiaceae:	Welwitschias:		
All species except that in app. I		II	2/4/77
Welwitschia bainesii	Welwitschia	I	7/1/75
Family Zamiaceae:	Cycads:		
All species except those in app. I		II	2/4/77
Encephalartos spp	Bread palms	I	7/1/75
Family Zingiberaceae:	Gingers:		
Hedychium philippinense	Philippine garland flower	I	7/1/75
Family Zygophyllaceae:	Caltrops:		
Gualacum sanctum (timber)	Lignum-vitae	II	7/1/75

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Thursday
April 3, 1980

Part XX

The President

Proclamation 4744—Petroleum Import Adjustment Program

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Presidential Documents

Title 3—

The President

Proclamation 4744 of April 2, 1980

Petroleum Import Adjustment Program

By the President of the United States of America

A Proclamation

In March 1979, the Secretary of the Treasury, having conducted an investigation of imports of petroleum and petroleum products in accordance with Section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862), concluded that such imports were entering the country "in such quantities and under such circumstances as to threaten to impair the national security." This finding confirmed the results of previous investigations conducted in 1959 and 1975.

The high level of the Nation's consumption of gasoline is the single most important cause of our dependence on foreign oil. At the same time, our consumption of gasoline can be reduced with less serious consequences to our economy than if similar action were taken with respect to other petroleum products, such as home heating oil. Consequently, the Secretary of Energy and the Secretary of the Treasury have advised that I take action to reduce oil imports by imposing a fee on imports of crude oil and gasoline and by establishing a program intended to ensure that the burden of the crude oil fee falls on gasoline. The Secretary of Commerce concurs.

I agree with their advice. To counter this threat to the national security of the United States, I deem it necessary to act pursuant to Section 232 of the Trade Expansion Act to adjust crude oil and gasoline imports through imposition of a gasoline conservation fee on imports of crude oil and gasoline and a system of passing the cost of this fee through on the price of gasoline in a manner consistent with and in furtherance of the objectives of the Emergency Petroleum Allocation Act of 1973 (15 U.S.C. 751 *et seq.*).

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, acting under and by virtue of the authority vested in me by the Constitution and the laws of the United States, including Section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862), and the Emergency Petroleum Allocation Act of 1973, as amended (15 U.S.C. 751 *et seq.*), do hereby proclaim, effective March 15, 1980, that:

Section 1–1. *Gasoline Conservation Fee*

Sec. 1–101(a). Except as otherwise provided in this Proclamation, no crude oil (except crude oil which is exchanged in accordance with the provisions in the next to last sentence of Section 4(b)(1) of Proclamation 3279, as amended) or gasoline may be entered into the United States unless it is by or for the account of a person to which a license has been issued by the Secretary pursuant to this Proclamation and the entry is made in accordance with the terms of this Proclamation and of such license.

(b) Unexpried and unused licenses, or portions thereof, issued pursuant to Proclamation 3279, as amended, for the entry of crude oil and gasoline may be used for the purpose of entering those respective products through April 23, 1980; *provided,* that the entry is otherwise made in accordance with the terms of this Proclamation and that payment is made for all applicable gasoline conservation fees.

Sec. 1–102(a). Upon application, the Secretary shall issue licenses subject to the gasoline conservation fees provided for in this paragraph.

(1) Except as provided in paragraph (a)(2) of this section, such licenses shall require, among other appropriate provisions, the payment of the following gasoline conservation fees:

(A) With respect to the entry of crude oil, such fee shall be $4.62 per barrel;

(B) With respect to the entry of gasoline, such fee shall be equal to the dollar per barrel amount of the gasoline entitlement determined in accordance with Section 2–1 of this Proclamation for the month in which the entry was made, which amount shall be published by the Secretary on or about the fifteenth day of the second month after the month of entry.

(2) Gasoline conservation fees shall not be applicable with respect to the following types of entries:

(A) Crude oil which is entered into the United States for the Strategic Petroleum Reserve Program by the Department of Energy, or by any other person certified by the Department of Energy as acting on its behalf;

(B) Gasoline produced in the U.S. Virgin Islands or a U.S. Foreign Trade Zone which has incurred a gasoline entitlement obligation in accordance with Section 2–1 of this Proclamation.

(b) All monies received under this section shall be deposited into the Treasury of the United States. The Secretary shall credit to a deposit fund account a portion of the monies received under the terms of this section to be drawn upon by the Secretary for the payment of refunds of gasoline conservation fees. All other amounts shall be credited to miscellaneous receipts. Balances credited in the deposit fund account and not required to be reserved for payments hereinafter provided for shall be transferred at the end of the fiscal year to miscellaneous receipts.

Sec. 1–103(a)(1). Except as provided in paragraph (a)(2) or (a)(3) of this section, applications for licenses subject to payment of a gasoline conservation fee under Section 1–102(a)(1) of this Proclamation shall not be considered unless they are accompanied by payment in the following amounts:

(A) For licenses for the entry of crude oil, such payments shall be in the amount equal to the number of barrels for which the license is to be issued multiplied by $4.62.

(B) For licenses for the entry of gasoline, such payment shall be in the amount equal to the number of barrels for which the license is to be issued multiplied by $4.35. Upon the determination of the actual fee, in accordance with Section 1–102(a)(1)(B) of this Proclamation, for the month in which an entry is made, an adjustment of the amount paid shall be made in accordance with section 1–104(a)(1) of this Proclamation.

(2) In lieu of prepayment in accordance with paragraph (a) of this section, an applicant for a license may submit (A) a bond with a surety on the list of acceptable sureties on Federal bonds, maintained by the Bureau of Government Financial Operations, Department of the Treasury (Department of the Treasury Circular 570) or (B) other security acceptable to the Secretary; *provided,* that for all subsequent entries made pursuant to the license received, payment shall be made for the applicable gasoline conservation fees. Bonds or such other security shall be posted for the amount chargeable under the license, unless the applicant has made timely payment of any fees imposed pursuant either to this Proclamation or to Proclamation 3279, as amended, for the twelve previous calendar months in which the applicant was obligated to pay fees, in which case bonds or such other security may be posted for fifty percent (50%) of the total amount chargeable.

(3) Payment of gasoline conseration fees by or for the account of a department, establishment, or agency of the United States shall be accomplished by transfers, as appropriate, from appropriation accounts available to such department, establishment, or agency. .

(b) Separate licenses shall be issued for crude oil and gasoline and for entries subject or not subject to payment of gasoline conservation fees.

(c) Licenses issued for crude oil and gasoline under this section shall be valid for a period of one year following the date of their issuance unless such licenses have been completely used prior to that time. A license shall be considered to be issued on the date the license is signed by the Secretary.

Sec. 1–104(a)(1). With respect to licenses for the entry of gasoline issued upon prepayment of gasoline conservation fees, the Secretary shall refund such prepaid fees by an amount equal to the difference between the actual fee for the month in which the entry was made and the prepaid amount of $4.35, multiplied by the number of barrels entered; *provided,* that the actual fee for the month in which the entry was made is less than $4.35 per barrel. In the event the actual fee exceeds $4.35 per barrel, the licensee must make payment for the difference.

(2) The Secretary is further authorized to refund fees paid or to reduce fees owed, in whole or in part:

(A) where the licensee prepaid the fees and failed to use the license issued to him;

(B) where the license fee has been improperly charged.

(b)(1) All applications for such refunds or reductions based on entries of crude oil and gasoline must be filed with the Secretary by the end of the sixth month following the month in which the entry was made.

(2) Applications for refunds of fees for any unutilized portion of a prepaid license shall not be acted upon until the license has been received by the Secretary. Such applications must be filed with the Secretary within six months of the expiration date of the license.

(c) Refunds or reductions made pursuant to this section shall be made without interest, and in no case may the total of the refunds or reductions claimed exceed the amount of the fees paid for the license.

Sec. 1–105(a). For the purposes of this Proclamation, crude oil or gasoline shall be deemed to have "entered" the United States when it is released for immediate delivery, or entered, or withdrawn from warehouse for consumption, whichever occurs first as evidenced by the dates on Customs Form 3461, 7501, or 7505, as appropriate, or successor forms.

(b) Licenses shall be presented to the District Director of Customs at a point of entry to be selected by the licensee and shall remain in Customs custody until fully utilized or expired, whereupon they shall be returned by the Customs Service to the Secretary.

Sec. 1–106(a). No license shall be required in connection with the entry into the United States of crude oil or gasoline which is transported from one point in the United States to another such point through a pipeline that passes through a foreign country. If, incidental to such transportation, the crude oil or gasoline is commingled with or displaced by foreign crude oil or gasoline, no license shall be required for the entry of quantities of like kind and quality equivalent to those which left the United States.

(b) In the event the volume of a particular shipment of crude oil or gasoline entered pursuant to a license exceeds, by five percent (5%) or less, the volume stated as remaining on the license against which the crude oil or gasoline is being entered, the Customs officer may permit the entry of the excess without license but in such an event he shall notify the Department of Energy. The licensee must, within ten days of such entry, remit payment for any gasoline conservation fees applicable to such excess.

(c) Customs officers are authorized to permit entry, without license, of quantities not to exceed 550 U.S. gallons of gasoline or 100 barrels of crude oil which otherwise would be subject to the payment of a fee, where the quantities entered are certified as:

(1) constituting samples for testing or analysis;

(2) included in shipments of machinery or equipment and intended for use in connection therewith; or

(3) baggage entries.

Sec. 1–107(a). Unless the Secretary directs otherwise, payment of fees shall be accomplished by wire transfer to an account specified by the Secretary, in accordance with such payment instructions as he may prescribe, or, at the licensee's option where the payment is for an amount less than $1,000,000.00, by delivery to the Secretary of a certified check or a cashier's check payable to the order of the Treasurer of the United States.

(b) Payments in accordance with Sections 1–101(b), 1–103(a)(2) and 1–104(a)(1) must be received by the last day of the second month following the month in which an entry is made if that day is a business day, and if not, by the end of the next business day.

Section 2–1. *Gasoline Entitlements*

Sec. 2–101. For each month beginning with March of 1980, the Secretary shall calculate the "total national fee."The total national fee for a particular month shall be the total amount of the gasoline conservation fees payable for all crude oil entered by all persons in that month.

Sec. 2–102. The price of a gasoline entitlement for each month shall be equal to the total national fee for that month divided by the total number of barrels of gasoline production in that month for which gasoline producers must purchase gasoline entitlements, as adjusted by the Secretary in accordance with Section 2–103 of this Proclamation.

Sec. 2–103. In order to correct for reporting or calculation errors, overpayments, underpayments, and similar occurrences in any month, the Secretary in one or more months subsequent to that month may adjust either or both the price of a gasoline entitlement and the number of gasoline entitlements issued to or required to be purchased by persons.

Sec. 2–104. For each month beginning with March 1980, the Secretary shall issue to each person who entered, during that month, crude oil subject to a gasoline conservation fee pursuant to Section 1–102(a), a number of gasoline entitlements equal in value to the total amount of gasoline conservation fees for crude oil entered in that month that were paid or are payable by that person pursuant to this Proclamation.

Sec. 2–105(a). Except as provided in paragraphs (b) and (c) of this section, with respect to its gasoline production in any month beginning with March 1980, a gasoline producer must purchase gasoline entitlements equal in number to the number of barrels of its gasoline production in that month.

(b) If in any full calendar month the per barrel amount of any additional levy imposed by Puerto Rico or the U.S. Virgin Islands after the effective date of this Proclamation on gasoline consumed in its jurisdiction or produced in its jurisdiction for consumption therein is at least equal to $4.20 or the value of a gasoline entitlement for that month, whichever is less, the number of barrels of gasoline production for which a gasoline producer must purchase gasoline entitlements for that month shall be reduced by the number of barrels of that producer's gasoline production in that month which is subject to the levy.

(c) A person which is issued gasoline entitlements for any month pursuant to Section 2–104 must sell each such gasoline entitlement to a gasoline producer required to purchase gasoline entitlements for that month.

Sec. 2–106. On or about the fifteenth day of the second month following any particular month beginning with March 1980, the Secretary shall publish a list which shall set forth the number of gasoline entitlements which each gasoline producer must purchase and which each person issued entitlements must sell for that particular month. Such purchases and sales shall be completed by the last day of the second month following that particular month. The Secretary

may direct persons that have not purchased or sold the required number of entitlements within that time to purchase or sell such required number of entitlements from or to a person with reciprocal requirements. A person which in a particular month must both purchase and sell entitlements may purchase them from itself.

Sec. 2–107. Notwithstanding any provision to the contrary in the Energy Regulations, no portion of any cost of a gasoline conservation fee imposed under Section 1–1 of this Proclamation may be considered under the Energy Regulations as a cost or part of a cost of crude oil, as that term is defined in the Energy Regulations, or any petroleum product, except as provided in Sections 2–108 and 2–109 of this Proclamation. For purposes of such sections, gasoline conservation fees shall be deemed to have been paid at the time that actual payment of such fees has been made to the Secretary, except that, in the case of an entry made pursuant to a prepaid license, payment of the fee may, at the option of the licensee, be deemed to have been made at the time of entry.

Sec. 2–108. Notwithstanding any provision to the contrary in the Energy Regulations, any person that is not a refiner shall be deemed to have incurred an increased product or acquisition cost for gasoline in any particular month in an amount equal to the sum of (a) the amount of any gasoline conservation fees paid by that person in that month for gasoline entered into the United States, less the amount of any refunds with respect to licenses for gasoline that person has received pursuant to Section 1–104, and (b) the amount paid by such person during that month for gasoline entitlements; *provided,* that, prior to May 15, 1980, no person shall increase the price of gasoline as a result of such increased acquisition or product costs pursuant to this section.

Sec. 2–109. Notwithstanding any provision to the contrary in the Energy Regulations:

(a)(1) A person that is a refiner may add to its $B_i t$ factor for gasoline (its increased purchased product costs as described in Section 212.83 of the Energy Regulations) for any month an amount equal to $4.20 multiplied by the number of barrels of gasoline subject to the gasoline conservation fee which that refiner entered into the United States in the month two months prior to such month. Any increases in gasoline prices that are allowed as a result of such addition to the $B_i t$ factor shall not be made prior to May 15, 1980.

(2) If, in any month beginning with June 1980, the amount of gasoline conservation fees on gasoline paid by a refiner in the month immediately preceding that month was greater or less than an amount determined by multiplying $4.20 by the number of barrels of gasoline subject to the gasoline conservation fee which were entered into the United States by that refiner in the month three months prior to that month, the difference shall be added to or subtracted from, respectively, that refiner's $B_i t$ factor for that month.

(b)(1) A person that is a refiner may add to its $A_i t$ factor for gasoline (its increased crude oil costs as described in Section 212.83 of the Energy Regulations) for any month an amount equal to $4.20 multiplied by the number of barrels of that refiner's gasoline production in the month two months prior to that month. Any increases in gasoline prices that are allowed as a result of such addition to the $A_i t$ factor shall not be made prior to May 15, 1980.

(2) If, in any month beginning with June 1980, the amount paid by a refiner for gasoline entitlements purchased in the month immediately preceding that particular month was greater or less than an amount determined by multiplying $4.20 by the number of barrels of that refiner's gasoline production in the month three months prior to that month, the difference shall be added to or subtracted from, respectively, that refiner's $A_i t$ factor for that month.

(3) The amount added to or subtracted from the $A_i t$ factor pursuant to this section shall not be subject to the "gasoline tilt" provision found in the last sentence of the first paragraph of Section 212.83(a)(2)(iii)(C) of the Energy Regulations.

Section 3–1. *Administrative Provisions*

Sec. 3–101(a). The Secretary is delegated authority to provide for the administration and enforcement of this Proclamation. The Secretary shall, from time to time, in consultation with the Secretaries of Commerce, State, and the Treasury, and other Federal agencies as appropriate, review the status of imports of crude oil and its primary derivatives in respect to the national security. In this connection, he shall inform the President of any circumstances which might indicate the need for further Presidential action under Section 232 of the Trade Expansion Act of 1962, as amended.

(b) The Secretary is delegated the authority to adjust, from time to time, the amount of the gasoline conservation fee specified in Section 1–102(a)(1)(A) of this Proclamation in order to ensure that, as closely as practicable, the value of a resulting gasoline entitlement approximates $4.20.

(c) All departments and agencies of the Executive Branch of the Government shall cooperate with and assist the Secretary in achieving the purposes of this Proclamation.

Sec. 3–102(a). Persons applying for licenses pursuant to Section 1–1 of this Proclamation shall submit such information and make such reports as the Secretary determines necessary to fulfill his responsibilities under this Proclamation.

(b) By the fifth day of the second month following any particular month, beginning with May 5, 1980 for March 1980, each gasoline producer shall report to the Secretary its gasoline production for that month. A person with gasoline production in Puerto Rico or in the U.S. Virgin Islands in any month shall report separately its gasoline production in Puerto Rico or in the U.S. Virgin Islands in that month and the portion of such production which is produced for consumption in Puerto Rico or in the U.S. Virgin Islands.

(c) The Secretary may require a person subject to the reporting requirements of paragraph (a) or (b) of this section to report any additional information determined by the Secretary to be necessary to ensure that the objectives of this Proclamation are attained.

(d) A person required under this Proclamation to submit any report to the Secretary shall correct any errors contained in that report by filing an amended report as promptly as possible but not later than the last day of the eighth month following the month for which the report was filed.

Sec. 3–103(a). A person subject to any reporting requirement under Section 3–103 of this Proclamation shall prepare and maintain at its principal place of business sufficient records, including but not limited to records specifically required by the Secretary, to document its compliance with the provisions of this Proclamation.

(b) All records required to be maintained pursuant to this Proclamation shall be retained for a period of three years.

Sec. 3–104. The Secretary may initiate and conduct audits and investigations relating to the scope, nature, and extent of compliance by any person subject to any provision of this Proclamation.

Sec. 3–105(a). In addition to any other remedies or penalties available to enforce this Proclamation or Proclamation 3279, as amended, the Secretary may revoke or suspend, in accordance with the provisions set forth in Subpart T, Part 205, of Title 10 of the Code of Federal Regulations, licenses issued to any person that violates the terms of this Proclamation or Proclamation 3279, as amended. In addition or in the alternative, and notwithstanding the provisions in Section 1–103(a)(2) of this Proclamation, the Secretary, in his discretion, may require that any person that violates the terms of this Proclamation post bonds for license fees in the full amount chargeable or prepay all license fee amounts in order to receive a license.

(b) In the event a person fails to fulfill an obligation arising under Section 2–1 of this Proclamation, that person shall be subject to the remedies and penalties available under the Emergency Petroleum Allocation Act of 1973.

Sec. 3–106. For purposes of this Proclamation, the following definitions shall apply:

"Crude oil" means a mixture of hydrocarbons that existed in natural underground reservoirs and which is liquid at atmospheric pressure after passing through surface separating processes, and does not include natural gas products. It also includes the initial liquid hydrocarbons produced from tar sands, gilsonite, and oil shale.

"Energy Regulations" means Parts 210, 211 and 212 of Title 10, Code of Federal Regulations.

"Gasoline" means gasoline as that term is defined in Section 212.31 of the Energy Regulations, which definition, for purposes of reference, is as follows: "all of the various grades, other than aviation gasoline, of refined petroleum naphtha which, by its composition, is suitable for use as a carburant in internal combustion engines."

"Gasoline entitlement" means the proportionate share which each barrel of gasoline production for a particular month bears to the total gasoline conservation fees payable for that month.

"Gasoline producer" means that person which first manufactures a volume of gasoline by refining, blending or any other process.

"Gasoline production," for a particular gasoline producer in a particular month, means the total number of barrels of gasoline manufactured by refining, blending, or any other process in that month by that gasoline producer in the United States, the U.S. Virgin Islands, and a U.S. Foreign Trade Zone. Where incremental volumes of gasoline are manufactured through the addition of substances to gasoline for which gasoline entitlement obligations have already been incurred, only the incremental volumes of gasoline, less any volumes of alcohol, are gasoline production. For March 1980, a gasoline producer's gasoline production shall be determined by multiplying the number of barrels of that gasoline producer's gasoline production in March 1980 by 17/31; *provided,* that in the event a gasoline producer can demonstrate that the actual number of barrels of gasoline produced by that gasoline producer in the period March 15 through March 31 was less than 17/31 of that gasoline producer's total gasoline production in March 1980, that gasoline producer may report actual volumes of gasoline production for the period March 15 through March 31. Gasoline manufactured by a gasoline producer on behalf of another person shall be included within the gasoline production of the gasoline producer unless the other person is a refiner, in which case the gasoline shall be included within the gasoline production of the other person.

"Person" means any natural person, or a partnership, association, consortium or any other entity whether organized for a business or other purpose, or a department or other governmental unit of a state, territory of the Federal Government. A person shall include a parent organization and the consolidated and unconsolidated entities which it directly or indirectly controls.

"Refiner" means refiner as that term is defined in Section 212.31 of the Energy Regulations.

"Secretary" means the Secretary of Energy or his delegate.

"United States" means the fifty States, the District of Columbia, and Puerto Rico, but not U.S. Foreign Trade Zones.

Section 4–1 *Conforming Amendments*

Sec. 4–101. Section 1 of Proclamation 3279, as amended, is amended by the addition of a new paragraph (f) to read as follows:

"(f) Except with respect to licenses issued pursuant to the next to last sentence of Section 4(b)(1) of this Proclamation, all licenses issued pursuant to this Proclamation which could be utilized to enter crude oil or gasoline pursuant to another Proclamation shall expire effective 12:01 a.m. April 14, 1980. Notwithstanding any other provision of this Proclamation, no licenses shall be issued hereunder on or after that date for the entry of any crude oil, unfinished oils, or finished products governed by another Proclamation during any period in which a fee of $0.00, as provided in Section 3 of this Proclamation, is in effect."

Sec. 4–102. Section 1(e) of Proclamation 3279, as amended, is amended by deleting the comma appearing after the word "Proclamation" and by adding the words " or any other Proclamation governing the entry of crude oil, unfinished oils or finished products," to immediately follow the word "Proclamation".

Sec. 4–103. Section 8 of Proclamation 3279, as amended, is amended by deleting the period at the end of the next to last paragraph and by adding at the end of that paragraph the following words: "*;provided,* that the system of issuing allocations and licenses with respect to exchanges under Section 4(b)(1) of this Proclamation shall remain in effect during any period in which a fee of $0.00, as provided in Section 3 of this Proclamation, is in effect.".

IN WITNESS WHEREOF, I have hereunto set my hand this second day of April, in the year or our Lord nineteen hundred and eighty, and of the Independence of the United States of America the two hundred and fourth.

Jimmy Carter

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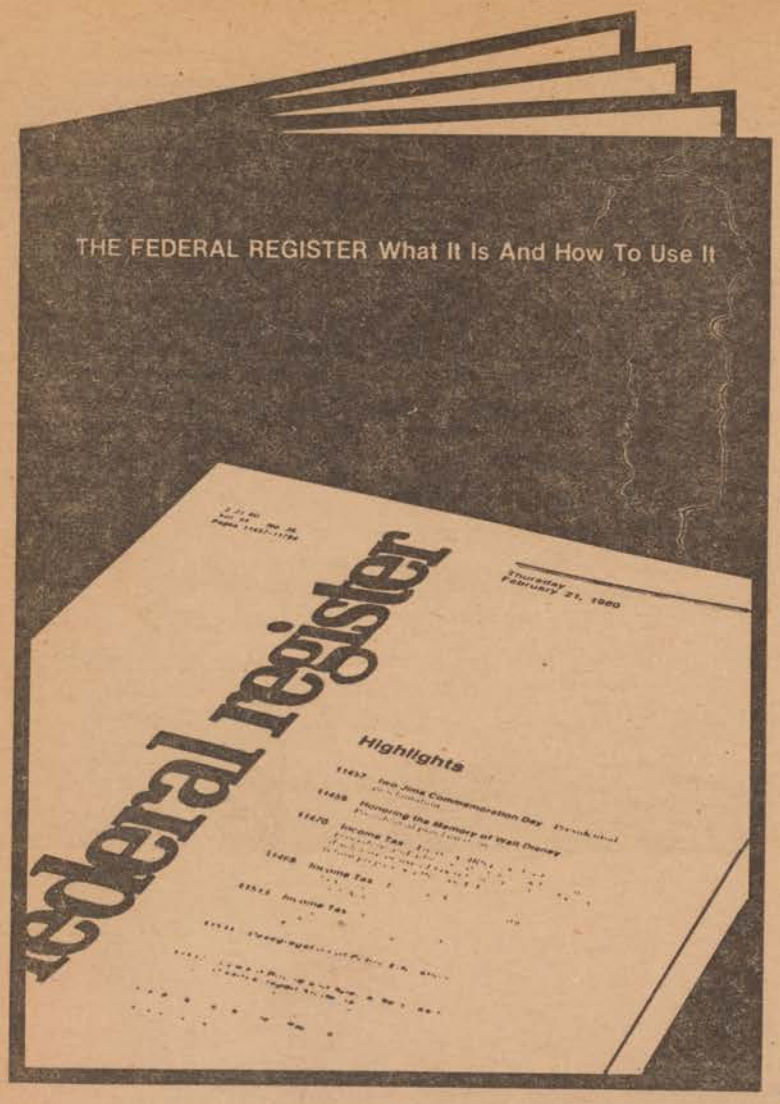

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